

J U D G E S

J U D G E D

out of their own

mouthes. *g-16-20*

O R

The Q U E S T I O N Resolved by

M A G N A C H A R T A, &c.

Who have been *Englands* Enemies,

*Kings* Seducers, and *Peoples* Destroy-

ers, from *Hen. 3.* to *Hen. 8.* and

before and since.

Stated by

Sr. E D V V A R D C O K E, Kn<sup>t</sup>.

late L. Chief Justice of *England*.

Expostulated, and put to the Vote

of the People, by J. J O N E S, Gent.

Whereunto is added

*Eight Observable Points of Law,*

Executable by Justices of Peace.

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*Abusum ego, non usum forensen damno.*

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*Ex legibus illis quæ non in tempus aliquod, sed  
perpetuâ utilitatis causâ in æternum late  
sunt, nulla abrogari debet, nisi quam aut u-  
sus coarguit, aut status aliquis Reipublice  
inutilem fecit. Tit. Liv. lib. 4. dec. 4.*

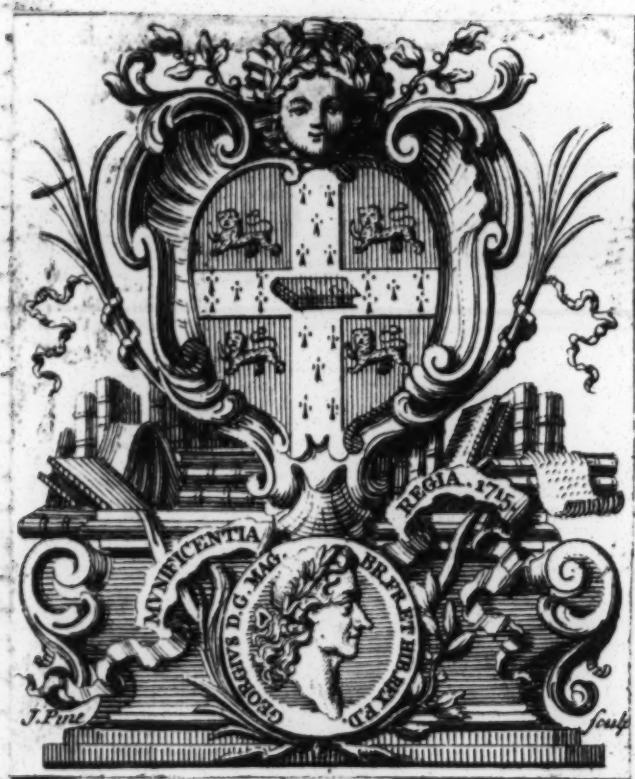
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L O N D O N,

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Church-yard. M D C L.



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To the Right  
H O N O U R A B L E,  
H O N O U R A B L E;  
Right  
W O R S H I P F U L L,  
And Well-beloved, the  
C O M M O N S,  
and P E O P L E of  
England Universally.



*Ecause Magna Char.  
Printed in English,  
An. 1564. and bound  
up with other Sta-  
tutes at large ( too Volumi-  
nous, and costly for the generality  
to read, or buy) doth yield less  
profit than hath been long neces-  
sary; I have presumed at the in-  
stance of some, to Dedicate this  
Treatise to you all, as it concern-*

## The Epistle.

eth the good of all that be, or  
would be good, & the hurt of none  
that have left any unhurt: where  
in you shall find so many Chap. of  
Mag. Char. Confir. Char. Art  
super Char. and other Statute  
at large, corroborating the same  
and the L. C. Exposition there  
upon, with some Expostulations  
and Queres of mine own, as  
thought requisite, or convenient  
for these times. The rest of the  
Charter, concerning the Church,  
(yet unsettled) or the Kings Tenures,  
(otherways disposed of) I  
have omitted as useless; desiring  
that thus much may prove usefull  
to all undertakers of Reformati  
on, as well Martial, as Civil.

Whose Servant (to my power)

I shall ever be, and continue  
with due faithfulness  
and humility

Jo. Jones



The Great  
**CHARTER**  
of the  
LIBERTIES of ENGLAND,  
Granted to the People  
of the same,

By King HENRY the third;

And accorded between him and  
them in diverse full *Parliaments*,  
as followeth, *viz.*



HENRY, by the  
Grace of God, King  
of England, Lord of  
Ireland, Duke of Nor-  
mandie, and Guyen, and  
Earl of Angeow. To  
all Arch-Bishops,  
Bishops, Abbots, Priors, Earls,  
Barons, Sheriffs, Provosts, Offi-  
cers; And to all Bailiffs, and our  
faithfull Subjects, which shall see  
this present Charter, greeting.

Know ye, that We, to the ho-  
nour of Almighty God, and for  
the salvation of the souls of our

B

Pro:

## Judges judged.

Progenitours, and Successours  
Kings of England, to the advancement of holy church, and amendment of our Realm of England; of Our mere free will, have given and granted to all Arch-Bishops, Bishops, Abbots, Priors, Carls, Barons, and to all Free-men of this Realm of England for evermore.

Cap. I.  
Liber-  
ties.

First, We have granted to God and by this present Charter have confirmed for Us, and our Heirs for evermore; That the church of England shall be free, and shall have all her whole rights, and liberties intolable: We have granted also, and given to all Free-men of our Realm for Us, and Our Heirs for evermore, these Liberties under-written, to have and to hold, to them, and to their heirs, of Us, and Our heirs for evermore.

Lord  
Coke  
upon  
Mag.  
Chart.  
Fol. I.

Here be four rehearsals (saith the Lord Coke) of four notable causes the making this Law. First, for the honour of God. Secondly, for the health of the Kings soul. Thirdly, For the exaltation of the church. Fourthly, for the amendment of the Kingdom. And all granted to all subjects, and their heirs, from the King and his heirs for evermore; That the great Charter might live, and take effect in all succession



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cessions of ages for ever.

The last of these causes which the **L. C.** in his Preamble calleth the **Expost and Quer.** ends for which this Charter was made, being for the amendment of the Realm, was (saith the **L. C.** upon the first chapter of *confirmatio Chart.* fol. 529.) to amend great mischiefs, and inconveniences, which oppressed the whole Realm before the making of both Charters, *viz.* This, and the Charter of the Forrest, which (saith the **L. C.** in his Preface) were declarative Acts of the old Common-Law of the Land, and no introductives of any new Law. If the mischiefs, and inconveniencies of the Realm were great before the said Acts were made to declare the Laws of the land, which formerly the lawyers reserved to themselves, till then undeclared? Were there not greater since those Acts were made, and the Lawes thereby declared, and since the accord of King and People, to keep the same inviolable, when, and as often as they were violated by Kings, and their Counsel, learned in the Laws? As hereafter shall appear.

Cap.8.  
Debt.  
Deb-  
tors.  
Suer-  
ties.

We, nor Our Bailiffs shall nor seise any lands, or rent, for any debt, as long as the present goods, and chattels of the debtors do suffice to pay the debt, and the debtor himself be ready to satisfie: Therefore shall neither the pledges of the debtor be distrained, as long as the principal debtor is sufficient for payment of the debt; and if the principal debtor fail in payment of the debt, having nought wherewith to pay, or will not, where he is able enough; Then the pledges shall answer for the debt, and if they will, they shall have the lands, and rents of the debtor, until they be satisfied of that which the debtor paid for him, except that the debtor can shew himself to be acquitted against the suerties.

L. Coke  
upon  
M. C.  
fol. 19.

We (saith the Lord Coke) spoken upon the politique capacitie of a King, extendeth to his Successours. And by Bailiffs, are meant Sheriffs, who write Baliva mea, &c. And by the words shall not seize is expressed the Kings Grace, who by the Common-Law had Execution against his Debtors bodies, lands, and goods. And by the Statute of 33. Hen. 8. cap. 9. The Sheriff is to inquire &c. and to extend all Lands, Goods, Chattels. &c. and take and imprison the Bodies, as by the

Sta

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Stat. appeareth, and as the daily practice sheweth.

If We extend to Successors, even Expost to King Hen. 8. Why not longer? and Quer. If *Magna Charta* was to live for ever, Why not hitherto? If the King of his Grace remitted by this Act the execution which the Common Law gave him before against his Debtors, Bodies, Lands, and Goods, in case of having nought wherewith to pay, through decay of their estates by unavoidable necessities; then the Kings Debtors obtained of the Kings Grace as much Liberty for their bodies, as this King gave to all his free subjects by the 29<sup>th</sup> of this Act, viz. *No Free man &c.* And for his Estate, as much as the proverb saith; *Where nothing is to be had, the King looseth his due.* If the King did not remit so much by this Act, then did he gain thereby more than he gave, contrary to the opinion of all Lawyers, that say, All Acts of Parliament are to be expounded for the benefit of the Subject. And what, and how did he gain? but contrary to his Honour, much more to his Grace, when two more of his subjects were hedged in

by this Act, as Pledges to pay for his undone Debtor, and to undoe themselves and their families by the bargain. And (their estates being too little to pay their own debts) their Creditours must see the King first served out of the same, to their no small prejudice, if not undoing, whereby many are injured through one mans occasion. If therefore this Act ought to be construed for the honour of the King, and benefit of the subject (as I believe it ought, and the L. C. saith, others have thought so) it followeth, That the Statute of the 23. *Hen. 8. 9.* was made (as many more were before and since) against *Mag. Chart.* and not onely against Kings honour, and grace, but also their Oathes, to the undoing of multitudes of their subjects, which was ungracious for their Counsel learned in the Laws, to give advice, or assent to the making such Laws, or when made, to allow them, much more to maintain them; being that all Judges are to receive *Mag. Chart.* for a Plea against all Statutes made against it. And all Judgements given against *Mag. Chart.* are, and ought to be void



## Fudges judged.

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void ; (as appeareth in the L. 6. preamble ) And all such Statutes as were made before the 42. of Ed. 3. against *Mag. Chart.* were then repealed: and (as I conceive) all made so since, are repealed by the Petition of Right, 3. Car. that restored *Mag. Char.* to its primitive vigor, and consequently enervated all its opponents.

**The City of London shall have the** Cap. 9.  
**old Liberties, and customs which** London  
**it hath been used to have. Moreover** &c.  
**We will, and grant, that all other**  
**Cities, Burroughs, Towns, and**  
**the Barrons of the five Ports, and**  
**all other Ports, shall have their Li-**  
**berties, and Free-customs.**

*This Chapter (saith the Lord Coke) L. C.  
 is excellently interpreted by an ancient upon  
 Author (quoting the Mirrour in the M. C.  
 Margent) who saith, that by this fol. 20.  
 Chapter, the Citizens of London ought  
 to have their Franchizes, whercof they  
 are inheritable by loyal Title, of the  
 gift, and confirmation of the Kings,  
 which they have not forfeited by any a-  
 buse ; and that they shall have their  
 Franchizes, and Customes, which are  
 sufferable by right, and not repugnant*

to law : And the same interpretation serveth for the Cinque-ports, and other places.

Expost  
and  
Quer.

Doth not this Charter, and charter sufficiently declare, and Lawyers (though unwillingly, yet plainly confess, that *London* and the rest, have old Liberties and customes, and that they are inheritable thereof, and ought still to have the same, so long and so far, as not repugnant to Law (which I conceive to be this Law, and not any that have been made since against it?) And do not the several Charters of *London*, and other Cities and Towns, obtained since this Law, declare further what those Liberties, and Customs were? And if the Kings learned Council have consented that he should grant, or Professors of the Law advised *Londoners*, or any other Citizens, to assent to things repugnant to this Law, and prevailed with both parties? Have they not misled both parties? And though they have so done often; yet in this case, doth not the Statute of the 19<sup>th</sup> of *Henry 7.* chap. 7. help the offenders with less danger than the forfeiture of their Customs, and Liberties

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Liberties, if they offend especially but in those points, which their lawyers so much misadvised them to ask, and the Kings, him to grant?

**Common-Pleas shall not follow** Ca. 11.  
**Our Court, but shall be holden in** Com-  
**some place certain.** mon-  
Pleas.

Before this Statute (saith the Lord L.C.  
*Coke*) Common-Pleas might have been upon  
holden in the Kings-Bench, and all M.C.  
Writs returnable into the same Bench; fol. 22,  
And because the Court was holden co- 23.  
ram Rege, and followed the Kings  
Court, and removable at the Kings  
will, the Returns were Ubicunq; fue-  
rimus in Angliâ; whereupon many  
discontinuances ensued, and great trou-  
ble of Furors, charges of Parties, and  
delay of Justice; for this cause this  
Statute was made, &c. And Pleas of  
the Crown were divided into high  
Treason, Misprison of Treason,  
Petty Treason, Fellony, &c. and  
limited to this Court, because contra  
coronam, & dignitatem, &c. So that of  
these (the Lord *Coke* saith) the Com-  
mon-Pleas cannot hold Plea. But to  
shew that Common-Pleas may be hol-  
den in the Kings-Bench, he saith, That

the King is out of this Statute, and may sue in that Court. Secondly, if a man be in Custodia, any other may lay upon him any Action of debt, covenant, or the like personal Action, because that he that is in Custodia, ought to have the privilege of that Court. And this Act taketh not away the Privilege of any Court. Thirdly, any Action that is Quare vi & Armis, where the King is to have a Fine, may be sued in this Court. Fourthly, Replevins may be removed thither. Fifthly, (saith the Lord Coke) Albeit originally the Kings-Bench be restrained by this Act, to hold Plea of any Real action, yet by a mean, they may; as when removed by Writ of Error from Common-Pleas, thither for necessitie, lest any party that hath right should be without remedie, or that there should be a failer of Justice; and therefore Statutes are alwaies to be expounded so, that there should be no failer of Justice.

**Expost.** Do not the L. C. words, viz. (Before this Statute, &c.) imply, that after the Statute, Common-Pleas ought not to be holden in the Kings-Bench, nor all Writs be returnable into the same Bench? Doth the Register



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gister, or *Natura brevium* therefore shew any Writ for debt returnable to the *Kings-Bench*? Doth not *Fitz. H. natura brevium* fol. 119. h. & k. declare that there is no Writ in Law for debt, but a *Justicies*, which is a judicial Commission to the Sheriff to determine the matter, *Nè amplius indè clamorem audiamus*: So that the *Kings-Bench* ought not to be troubled with the matter at all? or if an Original returnable to the *Common-Pleas*? Doth not that Original declare it self to be a Summons? And doth not Mr Kitchen in his *Ret. brev.* fol. 4. *Tit. com. bank*, declare, that Summons, Attachment, and Distingas, successively distant fifteen days one after another, is the onely Proces at Common Law? The *Kings-Bench*, and *Common-Pleas* ought to practise by the Common Law, declared by *Mag. Chart.* and accord of the King and People; declared and enjoyned to be observed inviolable, and immutable for ever. Did ever any Judge of the *Kings-Bench*, or *Common-Pleas*, advise, or consent to the making any Statute, or Law to the contrarie, (being sworn to execute and maintain *Mag. Chart.*

as

as anon shall appear all were, or ought to be) and was not perjured? Did, or doth any Judge of any Court of *Record*, observe any such Law being so made; or practice, or suffer to be practised (where he hath authority) any suits or proceedings contrary to *Mag. Chart.* and was, and is he not perjured? Doth not the practice of the *Kings-Bench* still shew, that thence doth issue no other Writ for debt, than a Bill of *Middlesex*, or *Latitat*, which expresse themselves to be for *Trespasse*? Are not those Writs still returnable *ubicunque fuerimus*, and the *Kings-Bench* therefore still removeable at the *Kings* will? whereupon (as saith the *L. Coke*) many discontinuances ensue, and great trouble of Jurours, charges of Parties, and delay of Justice; for which causes (he saith) this Statute was made. How doth this Statute (if therefore made) prevent such discontinuances, trouble, charges, and delay of Justice, but by declaring, that *Common-Pleas* shall not follow the *Kings-Bench*? How contradictorie to himself is the *L. Coke* then, when he labourerth to make *Common-Pleas* lawfull to be holden in the *Kings-Bench*?

*Bench?* And if (as he saith) the *Pleas* of the Crown were divided into high Treason, Misprision of Treason, Petty Treason, Fellonie, &c. & limited to the *Kings-Bench*, because *cont. Coron. & dign. Regis*; so that of these (saith he) the *Common-Pleas* cannot hold *Plea*. By what Justice can he desire to hold *Common-Pleas* in the *Kings-Bench*; unless because more gainfull, (as when he was supplanted by his successour, under colour of preferment, from the *Common-Pleas* to the *Kings-Bench*, he passionately expressed the difference, saying, That he was called from the warm kitchen, to the cold hall:) and that therefore he desired to reduce Justice to his desire, rather than his desire to Justice? But let us examine his Arguments for that purpose. First, (saith he) The King is out of this Statute. How? out of this Statute, which above all other, the King was sworn to observe, and obey, and to violate was perjurie, and punishable in all men without regard of persons, and no less in the Lo. C. to say and write otherwise? But (saith he) the King might sue in his *Bench*. And so might he in any Court of *Record* which he pleased;

pleased; for all such Courts are called his, and have power under him, to administer Justice to all men, according to their Commissions and Charters, as well as the *Kings Bench*; and therefore he had his Attorneys, and Sollicitours, attending many such Courts. Secondly, (saith he) if a man be *in custodia*, any other may lay upon him any action of debt &c. because (saith he) that he that is *in custodia*, ought to have the privilege of that Court. Now if a man be *in custodia* for Felonie, &c. and an Action for Debt, &c. be laid upon him, shall his privilege in being *in custodia* keep him from hanging (if he deserve it) till he pay the debt? or if he be hanged, and have any goods, shall the Creditour be paid his debt out of the same; or if he have any lands, out of the *Escheat*? I believe not. If a man be not *in custodia*, but a Justice of Peace, or a Grand-Juror, attending Sessions in *Cumberland* or *Cornwall*, what privilege of this Court doth he need? If he be arrested there, upon a Writ of trespass, when he is guiltie of none, is he not more disgraced than privileged by this Court?



Court? when he is forced to appear in this Court for trespass, and nothing declared against him for any such matter, ought he not to be dismissed for that matter, with costs, and damages, answerable to his disgrace and expences, though arrested at the Kings suit? Shall the King do any man wrong? how then doth the Maxim hold, that he cannot? Shall this Court abuse his name, to wrong his Subject? Is not Injustice, Perjury in a Judge sworn to do Justice? Is not all against *Mag. Chart.* and truth, which is, God himself? If not so dismissed, shall a declaration be admitted against him upon an Original for debt, where neither such Writ, nor cause belong? And shall the Defendant be enforced to wait upon his Bail for trespass, to answer that Declaration? is not that more Injustice? And moreover, if that Writ, or the Return thereof be forged, (as all, or most Originals directed to the Sheriffs of *London* or *Middlesex*, are; as well by Clerks of this Court, and so filed upon Record here as by Attorneys in the *Common-Pleas*, there;) shall that Declaration be admitted to say, that the Defendant

Defendant is *in custodia*, ( which is false; ) and be made a Record, which would be accounted the next truth to Gospel? And shall not the Defendant be admitted to plead *Mag. Ch.* against the jurisdiction of the Court, and such lying Records? If not; is not all this more Injustice and Perjury? Shall Judges give Judgements upon false Records ( except to burn them, and punish the makers, and causers ) and shall not they be counted, and called false Judges, and Perjurers; and their judgements false judgements and perjuries? Shall they, that commit Debtors into their Marshals custodie, upon such judgements by their priviledge ( as they call it, ) say that this Statute doth not take away such priviledges, when the Lo. C. himself saith, that all Statutes ought to be expounded so, that there should be no failer of justice; and this Statute, being *M. Ch.* ( chief of all Statutes ) and all its Confirmations say, that equal justice ought to be done to all men, without regard of persons? What Statute or custom did, or can give any priviledge to any Court to the contrarie? What benefit of priviledge hath

which hath the Debtor, that is so committed by this Court, and its priviledge, but his undoing, and his families, and often his untimely death by famine, and miserie? Is not that so occasioned by the rigour, and illegalitie of this Court, an offence of the highest nature, of Murther and Perjurie? Who gaineth any thing by this priviledge, but the Court, and their Marshal in extorted Fees, to the damage of both Creditor and Debtor, and often the ruin of both or either? Why therefore doth the L. C. call it a priviledge to the party in Custodie, when it appeareth to be no benefit, but prejudice unto him, and that more aggravated, to have more Actions laid upon him for more debts occasioned (perhaps) by his imprisonment? What law, or reason requireth any priviledge to any man for debt, since this Statute in the 29 chapter, freeth all mens bodies from imprisonment, untill they be lawfully tried by their Peers? and no law, but an abortive Statute made 25. Ed. 3. cap. 17. and repealed in the 42 of the same King (as afore-said) gave an Arrest against Debtors but Merchants and Accomptants? and

and a Statute made in the said 25<sup>th</sup> year of the said King, gave the Creditors two parts of all their Debtors lands, & all their goods (except the beasts of their plough) for satisfaction of their debts, which Statute is still in force, and daily executed accordingly? As for Accomptants, Debtors, and Tennants to the King, that are so indeed, if the Court of *Exchequer* be thought proper for them; why should others that are not such indeed, be sheltered to defend or countenanced to offend under that pretence? And as for Members of any Court, why ought not they to sue, and be sued by their Attorneys in other Courts than their own, since it is unnatural for any bodie to suffer any of its Members (though never so corrupt) to be put to any smart, which it may avoid? And may not, nay ought not every just Court avoid such suits, and the suspicion of their injustice by entertaining them, and proceeding therein, by leaving them to the justice of other Courts of competent judicature, as all other Courts do leave their Members to the mercy of the Courts at *westminster*?

or



or may not, nay ought not all Courts of judicature within their jurisdictions, determine the causes of all such Members of the Courts at *Westminster*, as shall be found, and arrested within their jurisdictions, notwithstanding any Writs of privilege, or other Writs to remove them, before they be determined; rather than the Courts at *Westminster* may send for the Members of every Court, to be justified by them? For who can say, he hath ever found any justice there against any privileged man? And how many that be no Members of any Court there indeed, are so countenanced, as subordinate to some ill Member, or other there, and have their Law for nothing, to bring Fees and gain to one or other of those courts, out of honest mens purses and Estates, against whom they can shew no colour of right any where, but where they know they shall be favored, and their Adversaries oppressed? And how many men of good Estates have been, and daily are, not onely oppressed, but undone by that means? Thirdly, for Trespass, *vi & Armis*; Is it but a common-Plea, and consequently proper to all Courts

*Judges judged.*

courts of Record, and rather to be tryed within that jurisdiction where the offence is committed, than elsewhere? And hath not the King his Fines imposed and levyed by the authority of all such Courts, as well as by the *Kings-Bench*? Fourthly, for *Replevins*, may they not as well be removed to, and determined by the *Common-Pleas*, as in the *Kings-Bench*? Fifthly, what meaneth the Lord by his words, *viz.* [*Originally restrained*] but that the *Kings-Bench* is restrained from having any original Writs Returnable thither in *Real Pleas*? And is it not as much restrained from originals in *Personal Pleas*, that are as *Common-Pleas*, as *Real*, by this Statute? Or by what other Statute, Law, or President, is it inabled to have any originals returnable to it for debt, when the Register and *Ret. brevium* have no such Presidents, as aforesaid? Is not therefore all the practice of the *Kings-Bench* for debt, unjust, and perjurious, as aforesaid? and moreover a faint Action, &c. as the prisoners for debt in that Court have lately set forth by their Petition to the Lord General, and his Officers concerning this matter.

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A Free-man shall not be ameirced for a small fault, but after the quantitie of the fault, and for a greater fault, after the manner thereof, saving to him his conteneiment, or Freehold: And a Merchant shall be likewise ameirced, saving to him his Merchandize: And any other Villain than Durs, shall be likewise ameirced, saving his Wainage, if he fall into Dur mercy: And none of the said Ameirciements shall be assessed, but by the oaths of honest men of the Visitation: Earls, and Barons shall not be ameirced, but by their Peers, and after the quantitie of their trespasss. No man of the Church shall be ameirced after the rate of his spiritual benefice, but after the rate of his lay tenement, and the quantitie of his trespasss.

Caput  
14.  
*Ameir-*  
*cia-*  
*ments.*

A Free-man here, hath a special understanding (saith the L. C.) and is taken for a Free-holder; and this appeareth by this clause, Salvo conteneimento suo. viz. Saving his Free-hold, &c. This Act extendeth to Ameirciements, not to Fines imposed by any Court of Justice, &c. Free-men are not intended to officers, or ministers, or officers of justice, &c. The writ of Moderata misericordia, giveth remedie to the Partie that is excessively ameirced, &c. Albeit the Law of England is

Lord  
Cook  
upon  
Magna  
Charta  
fol. 27.

is a Law of mercy, yet it is now turned to a shadow; for where by the wisdom of the Law, these *Ameirciements* were instituted, to deter both Demandants from unjust suits, and Defendants from unjust defences, which was the cause in former times of fewer suits, &c.

Expost  
and  
Quer.

If amerciaments were instituted to deter Plantiffs from unjust suits, and Defendants from unjust defences; and were the causes of fewer suits in former times; how comes the Law turned to a shadow in the Lord Cokes time? when in the *Kings-Bench*, and *Common-Pleas*, amerciaments were as frequent, and greivous as in any other time, and suits no fewer, nay more numerous than before, (as Records of both Courts declare) unless he means that all the Writs in the Register, and *Natura brevium*, both original, and judicial, (whereby suits were determined amongst neighbours friendly at home) became useless, since *Habeas corpus*, &c. carried all to *Westminster*? And that there injustice shadowed under the name and habit of justice, remunerated the litigious supporters of her being, with such shares



shares of her spoils, that though she trebled their amerciements, she made them alwaies gainers; unless when to satisfie their revenge, rather than their purses, they commuted their monies for counsels, and countenances, to undo the opposers of their malice, whereby both parties became losers, and often ruined; and injustice onely remained the gainer, and increased her kingdom (as the Divil doth his) by such suitors; and made more suits for *Westminster*, than all the Courts of Errors, and their Judges, Lawyers, and Attorneys there, shall wear out while they live, without extraordinary helps of their servants.

No town, or Free-man shall be distraigned to make Bridges, or banks, but such as of old time, and of right have been accustomed to make them in the time of King Henry our Grandfather. C. 15. Bridge: Banks.

No Banks shall be defended henceforth, but such as were in defence in the time of King Henry our Grandfather, by the same places, and the same bounds, as were wont to be in his time. C. 16. Banks.

Both the next precedent chapters sufficiently expound themselves, so that

that the Lord Coke speaketh no more to this matter, but that the *Mirror* saith, That divers Rivers and the Banks were in his time appropriated and blocked up by divers persons, to debar common-fishings, which were wont to be used there in the time of King Henry 2. And I believe, there are many more so done, more lately, which Commissioners for Sewers shall do well to look to.

C. 17. No Sheriff, Constable, Escheator, Coroner, or any other our Bailiffs, shall hold Pleas of the Crown

L. Coke upon M. C. 30. One mischief before this Statute was (saith the Lord Coke) That no Court, but the Kings chief Court, could command Bishops to give their clergy to such as ought to have it: another cause was, That the life of a man ought to be tryed before Judges of learning, and experience of the Laws of the Realm; for Ignorantia Judicis, est sapenumero calamitas innocentis. These are the reasons that the Lord Coke alledgeth, why some Pleas of the Crown were taken from Sheriffs, Castellans, Escheators, Coronors, and Bailiffs, under which names (saith he) are

com-

comprehended all inferiour Judges, Justices, and Courts of Justice: albe- it (saith he) it be provided by the 9<sup>th</sup> chap. of Mag. Charta, That the Barons of the five Ports should have all their Liberties and Customs. These general words (saith he again) must be under- stood of such Liberties and Customs, as are not afterwards in the same Char- ter by expresse words taken away, and assumed to the Crown.

Might not the Kings inferior Expost Courts command ordinary Ministers and to give men their Clergie? And Quer. might not that serve before *Magna Charta*, as it is usual since? For sel- dom, or never in our memories, did Bishops themselves attend any court for that service: and now, should they be necessary onely for that im- ployment? So the Kings Court would be onely to command them: but if Bishops may be spared, why may not that Court for that cause? And if by this Charter the King re- sumed some Pleas of the crown from those that formerly had them; doth it follow, that he resumed all Pleas from those that formerly had them? And if under the name of Bailiffs be  
C                      compre-

comprehended all Judges, and Justices, are not the Judges of the *Common-Pleas* and Barons of the *Exchequer* so comprehended? And are none of them of such learning and experience in the Laws of the Realm, to try the life of a man, as Judges of the *Kings-Bench*? Or else, why are they sent for Goal-deliveries, as well as Judges of the *Kings-Bench* are? Was it not provided by the 9. chapter of *Mag. Charta*, That *London*, and other cities, Burroughs and Towns, as well as the Barons of the five Ports, and other Ports should have their Liberties and Free-Customs? Are all these now resumed by this 17. chap? Who can understand so? Or what meaneth the L.C. by his riddles? Shall *Magna Charta* contradict it self, though the Lord C. would, and doth here and elsewhere? Are not Commissions of *Oyer* and *Terminer*, usual for Tryal of mens lives, where Judges of the *Kings-Bench* cannot reach, or dare not go? Doth not *London* and other Corporations execute their Charters by their Recorders, when the *Kings-Bench* gives them leave; and then do not the Judges of the *Kings-Bench*



## *Judges judged.*

27

Bench grant that such Judges may be as learned, and experienced in the Laws as themselves, for the Trying of mens lives? Are not mens lives Tryable for matter of Fact, and not of Law, (except Treasons that reach to thoughts? ) Are not Jurors the Judges of matters of Fact? What great learning, or experience in Law is requisite for a Judge to pronounce the sentence of death, where the verdict hath determined the life? But how many true men have been hanged, and thieves saved by Judges interposing, and obtruding their pestiferous pretended learning and experience in the Laws between the weak consciences of ignorant Jurors, and the truth? which kind of Jurors they make Sheriffs return for such purposes, when they may have such returned as know the Facts, and have sounder learning and experience in expresse Law than themselves.

All wears from henceforth be utterly put down by Thames, and Med-  
way, and throughout all England, but  
only by the Sea-coasts. &c.

L.C.  
upon  
M.C.  
fol.38.

It was specially given in charge by the Justices in Eyre (saith the Lord C.) that all Juries should inquire of all such as Fished with wears and Dams: and it appeareth (saith he) by Glandvil lib. 9. c. 11. That when any thing is unjustly occupied within the Kings demesne, or obstructed in publick waies; or Rivers, turned off their right channels, or Citie-streets built upon; and in general, as often as any nuisance to the Kings holding, or his High-way, or to any Citie, is committed; That is a purpresture, viz. an Inclosure, whereby one inchroacheth, or maketh that severall to himself, which ought to be common to all, or many; and every publick River, or Stream, the Kings High way.

Expost  
and  
Quer.

If Wears be nuisances (as I am sure they are) throughout England and Wales; and if Commissioners for Sewers, and Justices of Peace for want of them, be sufficiently authorized to reform such wrongs, and do not, because chief doers thereof, or sharers in the unlawful gain made thereof themselves: why not Justices in Eyre employed to execute their charge, for the general amendment

ment thereof, for the publick good?

One Measure of Wine shall be C.25. throughout our Realm, and one mea-  
 sure of Corn, viz. according to the Measures,  
 Quarter of London and Haberdies, &c.  
 that is to say, two yards within the  
 list, and as it is of Weights, so shall it  
 be of Measures.

This Act concerning Measures, and L. Coke  
 weights, that there should be one Mea-  
 sure, and one Weight through England, upon  
 is grounded upon the Law of God, M. C. fol. 49.  
 Deut. 25. v. 13, 14. And this by Au-  
 thority of Parliaments hath been often  
 enacted, but never effected.

If Weights and Measures through-  
 out England ought to be one, and  
 that not onely by the Law of God  
 (as the Lord C. instanceth) but al-  
 so by this Charter of Agreement be-  
 tween the King and the People;  
 Why did not the Lord C. (being  
 chief Justice of England) sworn to  
 do Law, and Justice too, and between  
 King and People, (as partly before  
 did, and hereafter further shall ap-  
 pear he was, or ought to have been)  
 see this point of Justice, (so highly  
 requi-

required by the Law of God , and so mutually agreed upon by the Kings of this Land, and their Subjects) duly executed ?

Ca. 16. *Inqui-* Nothing shall henceforth be given  
*sition.* for a Writ of Inquisition, nor taken of him that prayeth the Inquisition of Life, or Member, but it shall be granted freely.

L. C. *A Writ of Inquisition, viz. De odio*  
upon & atia, anciently called De bono &  
M. C. malo, &c. which the Common-Law  
fol. 42. gave a man that was imprisoned, though it were for the most odious cause, for the death of a man, for which (without the Kings writ) he could not be bailed ; Yet the Law favouring the Libertie and Freedom of a man from Imprisonment, &c. until the Justices in Eyre should come, at what time he was to be tryed; he might sue out this Writ directed to the Sheriff, &c.

Expost and Quer. If a Writ De odio & atia was given by the Common-Law, to a man Imprisoned for the most odious cause, even for the death of a man; and if the Common-Law favoured the



## Judges judged.

31

the Liberty of a man Imprisoned, so that he should be Bailed for such a Fact, until Justices in Eyre should Try him; Why not such a Writ still? Since *odium* (which the Lord C. defineth to be *hatred*) and *atia* (*malice*) and Prisoners for those causes are no scarcer now, than in former times? And why not Justices in Eyre (made since competent Judges by Commission without Writs) to determine such matters, which before they could but inquire of by Writs (as the Lord C. saith elsewhere, though he saith here to try them,) imployed for that service? And now if it be Lawfull for a Judge of the *Kings-Bench* to determine a debt, and to grant an *Habeas Corpus* for money, to bring the Prisoner before him to put in Bail; Why should he take money for the Writ, and refuse sufficient Bail tendred after Oath made of their sufficiency, without the Plaintiffs consent? Nay after acceptation of the Bail, Why refuse to File it?

No Free-man shall be taken, or imprisoned, or be disleised of his Freehold, or Liberties, or Free Customs, or be Outlawed, or Exiled, or

Ca2.9.

NoFree

man

&c.

any way otherwise destroyed; nor we shall not pass upon him, but by lawfull judgement of his Peers, or by the Law of the Land; we shall sell to no man, we shall denie, or deferre to no man, either Justice, or Right.

Lord  
Coke  
upon  
Mag.  
Chart.  
Fol. 46  
&c.

*Free-man extends to Villains both Sexes, &c. Upon this Chapter, as out of a root, many fruitfull branches of the Law of England have sprung. It containeth nine several Branches: First, That no man be taken or imprisoned, but by the Law of the Land; viz. The Common-Law, Statute-Law, or Customs of England, &c. Secondly, No man shall be disseised, viz. put out of his Freehold, that is, Land, Livelihood, or Liberties, or free Customs, such as belong to him by his free Birth-right; unless it be by the lawfull judgement, and verdict of his equals, or by the Law of the Land, that is (to speak it once for all) by the Due course, and proces of the Law. Thirdly, no man shall be Outlawed, or put off the Law, viz. Deprived of the benefit of it, unless he be Outlawed by the Law of the Land. Fourthly, No man shall be exiled, &c. unless according to the Law of the Land.*

Land. Fifthly, No man shall be destroyed &c. unless by verdict, or according to the Law of the Land. Sixthly, No man shall be condemned, &c. but by the judgement of his equals, or according to the Law of the Land. Seventhly, we shall sell to no man, Justice, or right. Eighthly, we shall denie no man Justice or right. And Ninthly, we shall deferre no man Justice or Right, &c.

First, If no man ought to be taken, or imprisoned but by the Law of the Land, viz. the Common-Law, Statute-Law, and Customs of England? is it not cleared by our Expostulations before upon the 11. Chapter, that Debtors are taken, and imprisoned in the Kings-Bench, contrarie to the Common-Law of England, declared by Mag. Chart. contrarie to the chief Statute of England, which is Mag. Char. and which the Lord Coke saith, should live (as was accorded by King and people) for ever? And contrarie to the Custom of England declared by Mag. Charta, and also by the Lord Coke, not to extend to the imprisonment of any

Expofit  
and  
Quer.

Debtours , but onely the Kings. And are not Debtors, other than the Kings, so imprisoned, as well elsewhere, as in the *Kings-Bench*? Secondly, if no man shall be disseised, *viz.* put out of his Freehold; that is to say, His Livelihood, Liberties, or Free-Customs, such as belong to him by his Birth-right; unless it be by the lawfull judgement, and verdict of his equals, or by the Law of the Land, that is to say, ( once for all ) by Due course, and Proces of Law. Are not Debtors disseised of their Livelihood, Libertie, and Freedom which belonged unto them as their Freehold by Birth-right, when they are imprisoned in *London, Westminster*, or elsewhere, by Arrests, and Actions for Debt, whether due, or not, upon meer suggestions of Adversaries, not so much to Judges, as to Catch-pols, without any judgement, or verdict of their equals, and without Due course, or Proces of Law, which should be Summons, Attachment, and Distringas, before any Arrest, as aforesaid? Are they not taken in the Countrey from their Ploughs, which are their Livelihood, and their Countreys, and their Freehold



hold by Birth-right ; by vagant Bum-baylies, and imprisoned there, till they give bail to appear at *Westminster*; and thence, instead of being remanded home to their sweet Farm-houses, large fields , and industrious Agricultures ; are they not sent to stinking Goals, close dungeons, and idle Monk-cels , whereby they are allowed little more ground to walk upon while they live , than might serve them to lie under , when they are dead ? Are not all the Corporations of *England*, and their free-chosen Officers , ( that should do them justice at home ) disseised of their Freeholds by Birth-right, and Charters , before and since *Mag. Char.* when they are prevented of the administration of justice in execution of their Offices to which they were sworn, ( and heritable successively from their Ancestours by Custom long before *Mag. Char.* and since confirmed by the same , and by Charters dated before, and since ) by *Certioraries* , *Habeas Corpus*, &c. before Judgement ; and pretence of Errors after; and though never any proved, or assigned, yet the causes never remanded , but detained at  
*west-*

*westminster*, where the usual correction of pretended Errours, is not by making any thing that is crooked, straight; but all that is straight, crooked; so that both Plantiffs, and Defendants give their titles for lost in a mist commonly; but he that hath the wrongfull possession, and money, holdeth it; and he that hath the right, and no money, goes to his grave without it? Are not all the People of *England* dispossessed of their Freehold, Liberties, Franchises, and Free customs, when they are deprived of that justice which they ought to have administered amongst them at home, by virtue of the Kings Writs (original for Enquiries, and judicial for Determinations) directed to Sheriffs of their own choice, in their own Counties, or Stewards of Hundreds, and Court-Barons, in their precincts, where the Free-holders themselves are Judges themselves, by ancient Common Laws, and Customs of *England*, before *Mag. Char.* and by it declared, and confirmed unto them as aforesaid? Can Writs of trespass executed for debt; or Capiases, grounded upon counterfeited Originals, be construed by any Law

Law, to be due Proces of Law? Thirdly, Are men lawfully Outlawed upon Exigents for debt, grounded upon a repealed Statute? and are not all Debtors that are Outlawed, so Outlawed? Are men lawfully Outlawed, that are Outlawed upon Exigents, grounded upon *Summonitus*, or *Non est inventus*, counterfeitly returned by Attorneys, who at the time of the return were no Sheriffs, or competent officers? and are not all, or most Debtors, and Trespassers, that are Outlawed in *London* and *Middlesex*, so Outlawed? Are men lawfully Outlawed upon any Exigents, that are Outlawed without the judgement of the Coroners of the Countie wherein they are Outlawed? Are the Coroners of any Countie now adays, present at every, or any Countie, when, and where men are Outlawed? Are not their names nevertheless returned as Judges of every Outlawry unknown to them, for the most part, or all? Are not those Returns false, and forged? and are such proceedings, the due course, and Proces of Law? How many thousands of the Free-men of *England* are Outlawed yearly, by such means? and how many

ny of them undone, before they can reverse them? How many are imprisoned thereupon, and have all their estates seised for the King, by Sheriffs chosen without the consent of the People? and often such as purchase their Offices, to gain by such means? How many Outlawries yearly are so clandestinely carried, that the parties so Outlawed, can hear nothing thereof, before they be imprisoned, and their estates destroyed as aforesaid? How many are further damnified by such Outlawries, procured of purpose, to debar them of their just suits in all Courts, until they reverse them? How chargeable are reversals thereof? What lawfulness is it, or what honour, for the Courts at *westminster*, to make unlawfull profit of such unlawfull practises? Cannot the Judges at *westminster* be contented to have counterfeited Returns of their Originals in *London* and *Middlesex*, but they must also have the like Returns of their Exigents throughout the Kingdom? Are not such Returns false, and perjurious in the Sheriffs that make them? Is it not sufficient for Judges, to perjure themselves, but that they must



must animate others to do so too, by not punishing them, when they know that practise? Are not the Sheriffs of *London* and *Middlesex*, and all the Coroners of the Kingdom made liable by this practise to Actions of the Case, and to pay costs and dammages to the parties grieved? Are such Judges, Lawyers, &c. for the Peace, or Profit of the Commonwealth, that beget, foment, or suffer the causes of such Actions, causelessly, but for their own ends and gains? Are such Courts to be called, or counted Courts of Justice, that maintain any Actions, or Arrests upon unjust grounds, or colour of any mis-begotten Laws, contrarie to *Mag. Charta*? Are not Assaults, Batteries, Rescues, Riots, and Homicides, frequent upon such Arrests? Are not many mens lives lost, and more hazzarded, and their estates ruined thereby? And if a Catch-poll be killed for making, or attempting such unlawfull Arrest, do not the Judges use to adjudge it wilful Murder, though the wronged party doth but endeavour his justifiable defence? And have they not begotten a Statute for officers to plead the  
General

General issue, by colour of which they justifie themselves, and their creatures, and condemn the guiltless? Are not the causers of Murther, as worthy to be hanged, as the doers? Are not they that maintain such Arrests, to the same ends as their Predecessors, Imps of the same generation? Why therefore their advice desired, or received in such matters? Are not the Releases of Errors, which prisoners are forced to seal before they can be enlarged, rather proofs of their guiltiness, than acquittances of such practitioners? Are not their Errors manifest to be wilfull, and gainfull onely to themselves, and hurtfull to the Commonwealth? are such Errors, or Proceedings, to be called Due courses, or Proces of Law? Then (to speak once for all) is not the Due course, and Proces of Law obstructed, and perverted? and a wrong course practised, full of Errors, Lies, Forgeries, Perjuries, &c. (as alreadie appeareth, and better shall hereafter) and cannot Law be executed without such practises? Doth not *Mag. Char.* and all its confirmations, shew how it may? Are not they sufficient lights, and

and guides for the Due course, Proces, and Proceedings which ought to be observed, in the right execution of Law? And doth not the Lord *Coke* confess them to be such, and that they never misguided any man, that certainly knew them, and truly followed them? Fol. 526. Fourthly, if *no man shall be exiled*, &c. Are not Debtors exiled from their Native Soils in *Cumberland*, or *Cornwal*, and from all their wordly comforts, of Wives, Children, Families, Friends, and Estates, both Real, and Personal when called, and forced by *Habeas corpus* &c. to attend Duke *Humphrey* in *Pauls*, or Judge *Owen* in *Westminster* (as good dead as any Judges living) to hear or dispatch Suits by the Law of the Land in any way of Justice, while the Suitors money lasts; or to relieve them with any Alms, when their Purse are spent? And if at last sent to the *Fleet*, or *Marshalsey*, where they be pent up as aforesaid; are they not worse Exiled than into *Turkie*, where they may have more Liberty of Land and Sea, and live in less Slavery than under Goalers in *England*, and have more hopes to return home again  
(like

(like Sir *Thomas Shirley*, and many others) than from these Hells by whence few find Redemption? Had *Henry of Bullingbrook* been Imprisoned for Debt here, (as such now are) when he was banished to *France*, could he have hoped to be King of *England*, except he had made all his Judges, and Goalers, the best sharers of all his Usurpations, as all the cheating Prisoners in these places do to theirs, as they and their Creditors can best tell, by dear, and daily experience? Fifthly, *If no man shall be destroyed, &c. unless by Verdict, &c.* Are not all Prisoners for Debt, who are first forced themselves to destroy their small Estates to buy bread to eat in Idleness, and to pay Fees to Goalers, &c. and at last to Famish in the *Fleet*, or *Marshalsey*, &c. destroyed both in Lives, and Estates, and their Families to boot, without any Verdict given, or intended for their Lives? Nay are not all the Free-men of *England*, that are, or may be subject to Debts, consequently subject to the like destruction? And worthy so long as they suffer the Laws of *England*, (contained in the glorious Fabrick of the *Great Charter*



many of the Liberties of England, built  
 Hells by their Ancestors for a perpetual  
 Monument of their care of their Po-  
 sterity, and their Liberties for ever)  
 to be thus destroyed by an Hypocri-  
 tical Generation of Pharisaical Pre-  
 tenders to the onely knowledge of  
 all these Laws, which by that pretence,  
 they thus pervert, to destroy all ho-  
 nest men whom it should save, and  
 to save all whom it should destroy or  
 punish; and that for unlawful re-  
 spects, and considerations tending  
 onely to their own profits, and ends.  
 Sixthly, *If no man shall be condemn-*  
*ed, &c. but by the judgement of his e-*  
*quals according to the Laws of the*  
*Land;* Are not all Debtors that are  
 Famished as aforesaid, Condemned  
 for their Lives in effect, though but  
 for their Debts in appearance, with-  
 out any Verdict of their equals, so in-  
 tended, contrary to the Law of the  
 Land? Seventhly, do not all the  
 Judges at *Westminster*, sell Justice,  
 when they sell Prisoners for Debt,  
 their Writs of *Habeas Corpus*, &c. for  
 money, when the King would have  
 all his Writs of Grace to be given to  
 his Subjects *Gratis*, and no Judge to  
 take any Fee, or Reward for any  
 thing

thing but of himself? Eighthly, Do they not deny Justice when they deny such Writs *Gratis*? Ninthly, Do they not defer Justice, when they detain poor men that areailable in Prison, while they have sufficient men ready to tender for their Bail, till they be forced to borrow money of other friends, and to send far, and stay long before they can receive it to loose their Bail in the interim, and be forced to seek others; by which delays, their Goalers Fees increase, and their Dyer, Lodging, and Expences draw charges, which they might have saved to find Bread for their Wives and Children at home; who perhaps are forced to fast by that means, and to sell, or pawn their Cows, or Clothes for this money, this damnable money, thus extorted by a Judge, for scribbling his Infamous name to a Writ, which doth but wrap a man, and his cause, faster in his clouches? O Merciless, Miserable, Mercenary Judge! that can neither give, nor lend so little as his name, to so much goodness in Policie, (if not in Charity) to give a man Liberty to breath, and take leave of his Home, upon security of

more

more advantage both to Court, and Party, than his imprisonment to return to his Pinfold. *Radamanth* himself abhorreth such foolish covetousness. Do they not defer Justice, when by their Writs they cause Indictments, Informations, and just Suits Commenced in other competent, and more proper Courts in all parts of the Kingdom, to be removed to *Westminster*, and there detained without any Tryal these 40 years? How many thousands of Papists, and heinous Malefactors that should have been punished in, and by their Counties, and Courts at home, have by this means found *Westminster*, and its Courts, their onely Sanctuaries, and Priviledges for none but Eminent, Opulent, Impenitent Offendours? But is not Justice denied, when anyailable man is denied to be Bailed? Or more, when Bail is accepted upon Oath for its sufficiency, and is denied to be Filed, and the Party so Bailed in Law, detained Prisoner still, at the Judges, and Plaintiffs pleasures? Briefly, Is not the Administration of all the Law, and Justice in *England*, Ingrossed and

Mono-

Monopolized at *westminster*, where the Judges and Courts assume to be chief, and do exercise a plenary jurisdiction over all others, so that they suffer none but themselves to err or to abuse Law; nor any to accomplish any Justice, or to reform any Errors, but onely themselves, who do pretend to correct all in their *Exchequer-Chamber*, where instead of correcting any, they confirm their own; which must be all as aforesaid. Lastly, is it unknown that they were wont to Buy their Offices of the Kings Servants, and therefore to Sell their Under-Offices to their own Servants, Attorneys, &c? And was not this the Buying and Selling of Justice that is yet unpaid for, & had need so to be Reformed? Is it any reason that any should Buy Justice, and not Sell it for gain by the Bargain? Is it not Bought to that end? Is it not to that end, Judges neglect to give Attorneys their ancient Oath, whereby they were wont to be Sworn to do no Falshood, nor cause any to be done in their Courts; and if they knew any, to give knowledge thereof to the Judges, &c. that they should increase no Fees, &c. (as you



when you may  
 e to bend of the  
 ary just to the  
 at the ect to give  
 o erre their Oath  
 accom eth to 40  
 in any Suit be Tr  
 , wh at home, ac  
 eir *Ex Gloucester, 6.*  
 ead o not likewise  
 n their neglect to tak  
 refaid.iffs, to prosecute  
 y were fect, or pay Costs  
 of the the Defendants, if t  
 ore to their Issues? which Judges  
 ir own ly used to do, and still ought, before  
 d was any Declaration be admitted, or  
 ng of Plea required, as saith the *Mirror of*  
 & had *Justice?* fol. 64. b. Is it not to the  
 it any same end the *Chancery* neglecteth to  
 ustice, take the Oath of all Complainants to  
 e Bar- make good their Bills in all points,  
 end? or pay Costs and Damages in case  
 neglect they fail, and that before any *Sub-por-*  
 ncient *na* be granted them, according to  
 ont to the Statute 15. H. 6. cap. 4<sup>o</sup>? And  
 d, nor were not all well ended, if all the  
 ourts; end were that none were forsworn  
 know- for Injustice, but the chief Justices?  
 c. that (though comfortless for them to be  
 c.(as so wretched as to have no associates,)  
 you is

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People  
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are not  
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ng Judge  
not, to  
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Mercuries  
s and blind  
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them when  
mend the shoot  
marks that yield  
sports of the gain?

The rest of this *Charter* I shall omit as aforesaid, for the reasons aforesaid, and shall conclude this with the beginning of another, made in Confirmation, Renovation, and Perpetuation thereof, by King *Edward* the first, in the 28 year of his Reign, as followeth: viz. **EDWARD** by the Grace of God, King of England, Lord of Ireland, Duke of Guyen. To all Arch-Bishops, &c. greeting. We have seen the great Charter of the Lord Henry our Father, of the Liberties of England in these words: And so beginnet the Charter as aforesaid, and endeth this, and it together, saying, We ratifying and approving these gifts, and grants aforesaid, confirm, and make

make strong the same for us, and our Heirs perpetually, and by tenor of these presents renew the same, willing, and granting for Us, and our Heirs, that this Charter, and all and singular its Articles for evermore, shall be stedfastly, and inviolably observed; And if any Article in the same Charter contained yet hitherto peradventure hath not been observed, nor kept; We will, and by our Authority Royal command from henceforth firmly they be observed. These, &c. being witnesses. Given at Westminster under our own hand the 28 of March, in the 28 year of our Reign.

Again, where the L. C. maintaineth the Statute of Marlebridge made 51 Hen. 3. cap. 5. which saith, *The great Charter shall be observed in all its Articles, as well in such as pertain to the King, as to others, and that shall be enquired of before the Justices in Eyre in their Circuits, and before Sheriffs in their Counties when need shall be, and writs shall be freely granted against them that do offend, before the King, or the Justices of the Bench, or before Justices in Eyre, when they come into those parts, &c. And the offenders when they be convicted shall be grievously punished by our sovereign Lord the King, in form above mentioned.*

Expost  
and  
Quer.

I shall but ask, Why not Justice in Eyre still? And why not Writs *Gratis* sent to the Sheriff of every Countie, to enquire of offences, and offenders against the great Charter? And doth not this Statute prove that Sheriffs ought to have such Writs, and to make such enquiries? And that the King referred himself as well as others, to the judgements as well of Justices in Eyre, as of the Justices of the Bench? and that he would have his Writs granted as well against him, as others, and that *Gratis*? doth it not further prove, that Kings accounted the Justices in Eyre, his Justices, and their Court, his Court; as well as the Kings-Bench? how therefore doth the Lord Coke hereafter call them new Justices, and their Court, new Court? But more of that in its place.

Now having done with so much of *Mag. Charta* as I promised: and with the 5 Chapter of the Statute of *Marlebridge*: and the 8 of the Statute of *Glocester*. Here ensueth the Confirmation of the great Charter, made at London 10 Octob. Anno 25 Ed. 1. three years before that which



## Judges judged.

51

is Printed before it, because that containeth all the *Charter* in 38. chapters at large, and this but 7. In the First of which it confirmeth both *Charters*, and every Article thereof; both made 9<sup>o</sup> H.3. in general words, as followeth, viz.

Edward by the grace of God, King of England, Lord of Ireland, and Duke of Guyen. To all those that these present Letters shall hear or see, Greeting: Know ye, that We to the Honour of God, and of Holy Church, and to the profit of Our Realm, have granted for Us, and Our Heirs; That the Charter of Liberties, and the Charter of Forrests, which were made by the Commonalty of the Realm, in the time of King Henry Our Father, shall be kept in every point without breach. And We will, that the same Charter shall be sent under Our Seal, aswel to Our Justices of the Forreft, as to others; And to all Sheriffs of Shiers, and to all Our other Officers, and to all Our Cities throughout the Realm, together with Our Writs, in the which shall be contained that they cause the foresaid Charters to be published; And to Declare to the People, that We have confirmed them in all points. And that Our Justices, Sheriffs, Bishops, and other Ministers, which under Us, have the Laws of Our Land to give, shall allow the same Charters pleaded

Cap. 1.  
Char-  
ters

pleaded before them in Judgement, in all their points, : That is to wit, The Great Charter, as the Common Law; And the Charter of the Forrest, for the Wealth of Our Realm.

L. C.  
upon  
Conf. C.  
f. 526.

The Title of this Statute (saith the Lord Coke) is Confirmationes Chartarum de Libertatibus Angliæ & Forreſtæ, viz: The Confirmations of the Charters of the Liberties of England, and of the Forrest: And true it is (saith he) that hereby the said Charters are expressly confirmed; but they are also excellently interpreted, (which is a Confirmation in Law) for here is nothing Enacted, but is included within Magna Charta. And by the Commonalty (saith he) is to be understood, by the consent of all the Realm, by Authority of Parliament: and many times by the Commonalty of England, is signified an Act of Parliament, &c. before Printing, and before the Reign of King Hen. the 7<sup>th</sup>, Statutes were Ingrossed in Parchment, and by the Kings Writ Proclaimed by the Sheriff of every Countie: this was the ancient Law of England, that the Kings Commandments issued, and were published in form of Writs (as then it was.) An excellent course, and worthie to be restored,

floured, &c. This clause (saith he) is  
 worthie to be written in letters of gold,  
 viz. That our Justices, Sheriffs, Ma-  
 jors, and other Ministers, which under  
 us have the Laws of the Land to guid  
 them shall allow the said Charters in  
 all points, which shall come before them  
 in Judgement. And here it is to be ob-  
 served, That the Laws are the Judges  
 Guides, or Leaders, according to that  
 old Rule, *Lex est Exercitus Judicum*,  
 viz. The Law is the Judges Armie :  
*Tutissimus Doctor*, viz. The safest  
 Teacher : or *Lex est optimus Iudicis*  
*Synagogus*, viz. Their best Synagoug.  
 And *Lex est tutissimus cassis*, viz.  
 Their safest Fortres. There is an old  
 legal word (saith he) called *Guidagi-*  
*um*, viz. Guidage, which signifieth  
 an Office of guiding Travelors through  
 dangerous and unknown ways. Here  
 it appeareth that the Laws of the  
 Realm, hath this Office to guid the  
 Iudges in all causes that come before  
 them, in the ways of right Justice, who  
 never yet misguided any man that cer-  
 tainlie knew them, and truly followed  
 them. The sence of the words, That  
 the great Charter is to be holden for the  
 Common Law, is, that it is a Common  
 Law to all, in amendment of the

Realm; that is, of great mischiefs, and inconveniencies, which oppressed the whole Realm, before the making thereof.

Expost  
and  
Quer.

Doth not the Lord Coke by all this his expression, commend this Statute very highly? Why did he not in his duty cause it to be observed in his time? And had not Iustices of the Forrest, and other Iustices, Sheriffs Majors, and other Ministers of his time (had they received the Great Charter with the Kings Writs) power thereby, as well as he, to cause the said Charter to be published to the People, and that the King had confirmed it in all points? Why did he (by neglecting his duty to send the said Charter and Writs unto them accordingly) make them fail of their duties? Doth not the Lord Coke confess by this clause, *worthie*, (as he saith) *to be written in letters of gold, That Sheriffs, Majors, and other Ministers, as well as Justices, and other Justices as well as those at Westminster, have, or ought to have the Law of England to be their guid, and ought to allow Magna Charta in all points, which in any Plea shall be before them?*

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Why then do the Iustices at *Westminster* by their *Habeas corpus*, and other Writs, (as aforesaid) disturb, and prevent all Sheriffs, Majors, &c. to exercise their Offices, before Judgment, or after, without proof of Injustice, or manifest Errors committed by them in their Judgements? Why do not the Iustices at *Westminster* (when they have Persons, and Causes brought before them by virtue of their Writs) allow *Mag. Car.* to be Pleaded before themselves, since they will suffer no others to hear it? How can it be true, (when they do not) that the Law is their guid? Do not they assume the sole Guiding, Learning, Interpreting, Exercising, and Over-ruling of the Law to themselves, when they suffer no other Iustices, or Ministers of the King, but themselves to have any Judgement therein, as aforesaid? Why do they bely the Law so much, as to call it their *Guid*, their *Teacher*, their *Army*, their *Synagogue*, their *Fortress*; when it is manifest, That their Attorneys, their Solicitors, their Catch-polls, and their Goalers, are their *Guids*, *Teachers*, *Supernumerous Armies*, and *Invinci-*

ble Fortresses, (as they trust, but may be deceived) all whose ways are to Injustice as aforesaid? How can that Law be called Common to all, which They, and these their Creatures, Monopolize, Ingross, and appropriate all to themselves as aforesaid?

C. 2. *Judgements.* And We will, That if any Judgement be given from henceforth, contrary to the points of the Charters aforesaid, by the Justices, or by any other Our Ministers, that hold Plea before them against the points of the Charters, it shall be undone, and holden for nought.

L. Coke *upon Con. C. f. 527.* whatsoever Judgement is given against this Statute of Magna Charta, &c. is made void by this Act, and may be reversed by a writ of Error, because the Judgement is given against the Law; for this Act saith, Soir de fait & pur nienttenuis, viz. as the Stat. Englisheth it self, It shall be undone and holden for nought.

Expost and Quer. If so? Why should not all Judgements (appearing as aforesaid, to be contrary to Mag. Charta) which are given for Arrests, and Imprisonment of mens Bodies for Debt, be undone, and

and held for nought? Why did Mr. *Garland* lately trouble the most High Court of Parliament (whereof, by so doing, he shewed himself an unworthy Member) with a ridiculous useless Act of his drawing, for the Enlarging poor Prisoners for Debt? Why did not he, (if he did ever read this place of the Lord (.)) mind the Parliament to command the Judges (who seem, if they have read it, to have forgot it) to reverse their Erroneous judgements against Debtors, so far as they extend to their Imprisonment, and to send their *Liberate* to all their Goalers, to set open all their Goal dores, and let forth so many of the Prisoners for Debt, as they have left alive? The poor, because they have no Estate whereof to pay; the rich, because they have Estates sufficient for all, or part; against which Estates, so much of their judgements may stand, as concerneth that, and not their Bodies: and Executions may be taken thereupon, by *Elegit*, or *Fieri facias*, according to the statute of *westminster* the 2. cap. 18<sup>th</sup>. agreeable to *Magna Charta*, and the Parliament not to be troubled, except to Im-

power the Judges by an Order, to rectifie their judgements according to that Law which is in force, and so forgo their Errors, and Repealed Statute of the 25<sup>th</sup> of Ed. 3<sup>d</sup> c. 17<sup>th</sup>. which ought to be no Guid, Leader, or Teacher, to learned and grave Judges, that can never be misguided by the right Law, if (as the Lord C. saith) *they certainly know it, and be pleased truly to follow it.* And by this course, as well the Creditors of the rich Debtors, as the poor Prisoners for Debt, (that have been wronged by the Judges Erronious judgements, and proceedings against *Mag. Char. ta*) may be partly redressed, and so rest satisfied, until the Parliament be pleased to right them further (as shall appear hereafter they may.) So likewise may that Prisoner, (which is Imprisoned again after his enlargement by *Garlands Act*) be Enlarged again by the same Judge that Committed him, without troubling the Parliament, or People with any such Appeal, as is lately divulged; or suffering the *Apprentices Out-Cry* to run so far, That now it will never be stopped till the Thieves be taken.

And



And that all Arch-Bishops, and Bishops, shall pronounce the Sentence of Excommunication against all those that by word, deed, or counsel, do contrary to the said Charters, or that in any point break, or undo them; And that the said Curse be twice a year Denounced, and Published by the Prelates aforesaid: And if the same Prelates, or any of them, be remiss in the Denunciation of the said Sentences; the Arch-Bishops of Canterbury, and York, for the time being, shall Compel, and Distrain them to the Execution of their Duties, in Form aforesaid.

Cap.4.  
Excom.  
&c.

*This Excommunication the Prelates could not pronounce without warrant by Authority of Parliament, because it concerned Temporal causes.*

L.C.  
upon  
Confir  
Cart.  
f. 527.

Was not the Authority of this Parliament sufficient Warrant for Prelates to pronounce Excommunication according to the Tenor, and limitation of this Act? Doth not the Lord Coke say before, *That this Act is not onely an Express Confirmation of Magna Charta, but also, a Confirmation of it in Law?* Doth he not say before that; *That Magna Charta should live for ever, and in all Successions of Ages for evermore?* Is not the substance

Expost  
and  
Quer.

stance of the Excommunication given by this Act to the Prelates to pronounce? Had the Prelates any more to do therein, but to pronounce an Excommunication? What meaneth *Ipsa Facto* in the Act, but to let all future Ages understand, That the breach of *Mag. Char.* which is a Declaration of the Fundamental Laws of *England*, is such an Offence as deserveth an everlasting Curse inflicted by the Law it-self upon the Breakers for ever? Which Curse receiveth no more strength from the Pronouncer, than a Sentence of Death from a Iudge, who doth but tell a Fellow whom the Law condemneth, what shall be the manner of his Death. If any Excommunication was ever pronounced by virtue of this Act (as there were two in two several Kings Reigns) were not those Excommunications in force, and so to continue as long as *Magna Charta* it self? the Prelates, and their Successours neglect of their Duties, by discontinuing such Denunciations twice yearly, afterwards notwithstanding? If so? Are not those Excommunications still in force, except Absolutions be produced,

ced, granted, and given by equal Authority to that whereby those Excommunications were Denounced? If so? Are not Excommunications, until Absolutions, of the same accompt, and validity in Law, as Out-lawries, until they be reversed? If so? Are not all the Lands, Goods, and Chattels of all Excommunicats, now the States, as formerly they were the Kings, and so Seizable, Sequestrable, and Convertible to that use, until Absolution? And ought not satisfaction precede Absolution? Ought not that satisfaction extend to every particular man that hath been wrong'd in this case, which (as the L.C. saith) is a *Temporal case*, and so called, in respect of the interest of all men, called by the Clergy, *Temporal*, for distinction from themselves, that would be called *Spiritual*? And so (as I believe) not to be commuted by a *Prelatical Sentence*, to a trivial Pennance; nor pardoned by Parliament, without excepting every particular Interest. And what Parliament can Pardon, or Absolve Offendours against *Magna Charta*, but by the Rules of *Magna Charta*, without offending *Magna Charta* them-

themselves, and incurring the same Excommunication, as they have incurred that would be Absolved? If Excommunications be no Terrors to *Atheistical Judges, Justices, &c.* who neither Believe, nor fear, Heaven, Hell, God, Justice, nor Laws, (though they cannot in nature and reason, but know that such there are, and are to be beleived, feared, and obeyed) shall not Excommunications be sufficient Warrants for Christians, English Christians in *England*, (being warranted not onely, as the *L. C.* saith, *By Authority of Parliament*, but of many Parliaments, such Parliaments of such Infallibility as were those wherein *Magna Charta*, and all its Confirmations were made, and grounded upon the Common-Laws of *England*, which, as all Lawyers profess, were grounded upon the Law of God, the Word of God, the God of Christians, Christ Jesus, the God of Truth, even Truth it self,) to put them in Execution? If not? To what ends are Parliaments, or the Laws of God, and man, to such as dare not, or will not, if, and when they may? Doth not the Statute of *Ano. 1<sup>o</sup>. P. & M. cap. 12<sup>o</sup>.* which made

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made it Felony for twelve English persons, or above, to assemble together of purpose to break any point of the Laws of *England*, imply it to be Warrantable for all the People of *England* to Assemble together, to cause the Laws of *England*, made by all their consents, to be observed, and to punish not onely the Breakers, but also the onely begetters, and causers of all the Breakers, and Breaches of all the Laws of *England*, the onely assumers of the knowledg thereof, and concealers of that knowledge from the People; so that none but themselves, can knowingly break the Laws, because they will not let them know them? Lastly, If Excommunications be nothing formidable to Lawyers, to make them care whether they incur, or shun them, but as their profit guides them? Let us see what the *L. Coke* saith, fol. 536. concerning the conclusion of this Act, and the Seals that were put to it, and the Oaths of the King and Parliament, then and for ever, for the Ratification of it, omitted in the Stat. at large, in Print, but to be seen in the Tower, *Rat. Part. 7<sup>o</sup>. Hen. 4<sup>th</sup>. 2<sup>a</sup>. 60. beginning*

ing with the word *Simile*, &c. Note (saith he) *the Solemnitie of this Act*, in that all the *Arch-Bishops, Bishops, Earls, Barons, &c.* did put their Seals thereunto. A rare example, which was done for the obliging of them the more firmly to the observation of this Act, which concerned the Laws, Liberties, and Free-Customs of their Countrey; and for their greater Obligation for the due Observation of this Act, they took a voluntary Corporal Oath.

Expost  
& Q.

And let us note, that if the Judgement of God, and this Parliament, hath made the Prelates sensible of their slighting of their Predecessors Excommunications, seals and oaths? by what justice, or excuses, shall Lawyers avoid the same Judgement? And though the Ignorance of *Mag. Charta*, and the Law (which Lawyers have begotten & caused by concealing the same from them as aforesaid) can be no safe Plea for any with God, or man, without prayers for Remission, and manifestation of Repentance; yet is Ignorance a better subject for mercy, than knowing wilfulness; and the people, while ignorant of *Mag. Charta*, are more capable

ble of grace for the breaking of it, than when they know it, if they put not the Iudgements of it, in Execution, against the causers of their offence.

Now I shall let you see, that there were two *Excommunications* denounced against the breakers of *Mag. Charta*, according to this Statute; as followeth.

The Year of our Lord One thousand two hundred fiftie three, the third of May, in the great Hall of the King at Westminster, in the presence, and by the assent of the Lord Henry by the Grace of God, King of England; and the Lord Richard Earl of Cornwall his brother; Roger Bigot Earl of Norfolk and Suffolk, Marshal of England; Humphrey Earl of Hereford; Henry Earl of Oxford; John Earl Warren, and other estates of the realm of England: We Boniface, by the mercie of God, Arch-bishop of Canterbury, Primate of all England; T. of London, H. of Ely, S. of Worcester, E. of Lincoln, W. of Norwich, P. of Hereford, W. of Salisbury, W. of Durham, R. of Excester, M. of Carlile, W. of Bath, E. of Rochester, T. of S. Davids, Bishops, apparrelled in Pontificals, with tapers burning against the breakers of the Churches Liberties, and of the Liberties, or other Customs of the realm of England, and namely of those which are contained

in

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munic.  
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in the Charter of the Common Liberties of England, & Charter of the Forest; have denounced the sentence of Excommunication in this Form: By the Authoritie of Almighty God, the Father, the Son, and the holy Ghost, and of the glorious Mother of God, and perpetual Virgin Mary; of the blessed Apostles Peter and Paul; and of all Apostles, and of all Martyrs; of blessed Edward King of England; and of all the Saints of heaven; We Excommunicate, accurse, and from the benefits of our holy Mother the Church, we sequester all those that hereafter willingly, and maliciously deprive, or spoil the Church of her Right; and all those that by any craft, or wilfulness do violate, break, diminish, or change the Churches liberties, and Precedents contained in the Charters of the Common Liberties, and of the Forest, granted by our Lord the King to Arch bishops, Bishops, and other Prelates of England: And likewise to the Earls, Barons, Knights, and other Freeholders of the Realm; and all that secretly or openly, by Deed, word, or counsel, do make Statutes, or observe them being made, or that bring in Customs, or keep them being brought in, against the said liberties, or any of them, the Advisors, Lawmakers, Counsellors, and the Executors of them, and all those that shall presume to Judge against them. All and every which Persons before mentioned, that willingly shall

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shall commit any thing of the Pre-  
misses, let them well know; That  
they incur the foresaid Sentence Ip-  
so facto, first upon the deed done. And  
those that commit ought ignorantly,  
and be admonished, except they Re-  
form themselves within 15. daies af-  
ter the time of the Admonition; and  
make full satisfaction for that they  
have done, at the will of theordi-  
nary, shall be from that time forth,  
wrapped in the same sentence. And  
with the same sentence, we burthen  
all those that presume to perturb the  
peace of our Sovereign Lord the  
King, and of the Realm. To the  
perpetual memory of which thing,  
we the aforesaid Prelates have  
put Our Seals to these Presents.

What though the Form of this Ex-  
communication be Popish? Is not the  
Substance the maintenance of Eng-  
lands Liberties? And is not that all  
which the meaning of this Law re-  
quireth? If Judges and Prelates, as  
well since King Hen. 8. as before,  
have neglected their Duties in Itte-  
rating the charge of their Functions,  
the first, in pronouncing Sentence,  
and the other in Executing it; doth  
not once Pronouncing, & once exe-  
cuting of such one Sentence of Law,  
as concerneth all Ages, Sexes, and  
Con-

Expost  
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Quer.

Conditions of People to learn and remember, no less for the Preservation of their lives, and livelihoods, than Scriptures for their Salvation, take away the plea of Ignorance from all men? Shall any man commit that sin which he knoweth to be once so Declared by the Law, and think to avoid punishment because not often so Declared by Law-Professours? Are not all men bound to search the Scriptures, and learn the Laws at their perils therefore? If Ignorance were a plea, shall knowledge be excused? Professors of knowledge? nay, such as ingross that Profession from all others; nay more, such as are the onely causes and punishers of all other mens Ignorance?

It appeareth that this Sentence was Denounced in the time of King Hen. 3<sup>d</sup>. Now followeth another, Denounced upon the said Confirmation made in the 25<sup>th</sup>. year of King Ed. 1<sup>o</sup>. viz.

*Excom.*  
2.

In the Name of the Father, the Son, and the Holy Ghost, Amen. Whereas our Sovereign Lord the King, to the Honour of God, and Holy Church, and for the common profit

Profit of the Realm, hath granted for him and his Heirs for ever, these Articles above written. Robert Arch-Bishop of Canterbury, Primate of all England, Admonished all his Province, Once, Twice, and Thrice. Because that shortness will not suffer so much delay, as to give knowledge to all the People of England of these Presents in writing: We therefore enjoyn all persons of what Estates soever they be, that they, and every of them, as much as in them is, shall uphold and maintain these Articles, granted by our Sovereign Lord the King, in all points; And all those that in any point do resist, or break, or in any manner hereafter procure, counsel, or any wise assent to resist, or break those Ordinances, or go about it by word, or deed; openly, or privily, by any manner of pretence, or colour: We the foresaid Arch-Bishop by our Authority in this writing expressed, do Excommunicate, and accurse, and from the Lord Jesu Christ, and from all the company of Heaven, and from all the Sacraments of Holy Church, do sequester, and exclude.

Doth not the word, *Hereafter*, extend to all successions, and imple a Duration, as long as there be a *Mag. Charta*, and a breaker of it? Do not Parliamentarie Oaths, as well as their Laws, include absents, and futures,  
as

Expost  
& Q. 1

as well as present? If neither Oaths, nor Excommunications be obligatorie to Atheists, shall not their hands, and seals, bind them and their Heirs, and Executors after them, as common Bonds signed and sealed between private parties, commonly do? And more specially, such as take upon them the sole Execution, and Administration of the Laws, Liberties, and Freehold of *England*? Shall not *Charters* of Parliament, made, signed, sealed, and confirmed by Authoritie of Parliaments, bind all Subjects, their Heirs, Executors, and Administrators, as well, and as far, as private *Charters* of Feofments shall bind their Contractors, and their Heirs, &c. Nay, as far as Acts of Parliament can bind, till repealed. Is not every Court called *Curia*, of the Care it ought to have to execute that charge it undertaketh? and not to exact, and raise Fees, &c. for discharging themselves of all their said Obligations to do even Justice to all men, and to force men to pay those exactions, even for doing injustice? If all before written be not sufficient to discover that to be true, and that therefore the Lives, Lands



Lands, & Goods, possessed by Judges, Lawyers, all, or most of them, are in the States power to seize into their hands, to the use of the Commonwealth, as aforesaid; let us look a little further, and we shall find more that may. And first, the Statute called *Articuli super Chartis*, viz. Articles upon the great Charters, made 28. of Ed. 1. viz. the same year as the Confirmation at large (which consisteth of 38. chapters of *Magna Charta*) was made; proveth further, as followeth.

Stat. of  
Artic.  
on the  
great  
Chart.  
A. 28.  
Ed. 1.

For as much as the Articles of the great Charter of the Liberties of England, and of the Charter of the Forrest, the which King Henry, Father to our Sovereign Lord the King, granted his People for the Weal of his Realm, have not been heretofore observed, ne kept, and all because there was no punishment executed upon them which offended against the points of the Charters before mentioned: Our Sovereign Lord the King hath again granted, revived, & confirmed them at the requests of his Prelates, Bishops, & Barons assembled in his Parliament holden at Westminster in the 28 year of his reign. And hath ordained, enacted, and established certain Articles against all them that offend contrary to the points of the said Charters, or any

Pream-  
ble.

any part of them, or that in any wise transgress them, in the form that ensueth, viz.

First of all, That from henceforth the great Charter of the Liberties of England, granted to all the Commonaltie of the Realm, and the Charter of Forrest in like manner granted, shall be observed, kept, & maintained in every point, in as ample wise, as the King hath granted, renewed, and confirmed them by this Chart. And that the Charter be delivered to every Sherif of England under the Kings Seal, to be read four times in the year before the people in the full County, that is to wit, the next County day after the Feast of s. Michael, and the next County day after the Feast of the Circumcision, and after Easter, and after the Feast of s. John Baptist. And for these two Charters to be firmly observed in every point, and Article (where before remedy was at the Common Law) there shall be chosen in every Shire Court by the Commonaltie of the same shire, three substantial men, Knights, or other lawfull, wise, and well disposed Persons to be Justices, which shall be assigned by the Kings Letters Patents under the great Seal, to hear, and determine (without any other writ but onely their Commission) such plaints as shall be made upon all those that commit, or offend against any point contained in the aforesaid Charters, in the Shires where they be assigned, as well with

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in Franchises, as without, and as well for the Kings servants out of their places, as for other. And to hear the plaints from day to day without any delay, and to determine them without allowing the delays which be at the Common Law: And the same Knights shall have power to punish all such as shall be attainted of any Trespass done contrary to any point of the two said Charters (where no remedy was before at the Common Law, as before is said) by Imprisonment, or by Fine, or by Amercement, according to the Trespass. Nevertheless the King, nor none of his Council that made this Ordinance, intend that by virtue hereof, any of the foresaid Knights shall hold any manner of Plea by power, for to admit any suit in such cases wherein there hath been remedy provided in times passed, after the course of the Common Law by writ. Nor also that the Common Law should be prejudiced, nor the Ch. aforesaid, in any point. And the R. Willeth, that if all three be not present, or cannot at all times attend to do their Office in form aforesaid, the King commandeth that two of them shall do it. And it is Ordained that the Kings Sheriffs, and Bailiffs shall be attendant to do the commandments of the foresaid Justices, as far forth as appertaineth unto their Offices. And besides these things granted upon the Articles of the Charters aforesaid. The King of his special Grace for redress

of the grievances that the people hath sustained by reason of his wrongs, and for the amendment of their Estate, to the intent that they may be the more ready to do him service, and the more willing to assist, and aid him in time of need; hath granted certain Articles, the which he suppoeth shall not onely be observed of his leige people, but also shall be as much profitable, or more, than of the Articles heretofore granted.

L. Coke

f. 537,

538,

539.

One of the causes for the making of this Act, was (saith the Lord Coke, as in the Preamble is suggested) that there was no certain punishment in many points established by the said Charters against the violators of the same; which also by this Act (saith he) is remedied: And the word, People, here (saith he) doth include all Kings Subjects, &c. And again, the word, Pain ne fuit estable, some read (saith he) Pain ne fuit execute, and that is true in effect; but the Original is, Pain ne fuit estable; that is, pain was set down certain: And (saith he, fol. 539.) This Act had but the force of a Charter, until confirmed by this Parliament, the 34<sup>th</sup> Ed. 1. And that these Charters should be read four times in the year, in full County, here



an order taken for the publishing. And  
 Ou remedie ne fuit avant, &c. is to  
 be construed (saith he) where no Action  
 was given by the Kings writ, to be pur-  
 sued at Common Law, &c. Again, here  
 (saith he) for the better Execution  
 of those glorious two Lights, Magna  
 Charta, and Charta Foresta, a new  
 Court, and new Justices were ap-  
 pointed, &c. Again (saith he) these  
 clauses against the Kings Servants out  
 of their places, as well as others: And  
 to hear the Plaints without delay, day  
 by day, and to determine them without  
 admitting such delays as be at Common  
 Law, was the first ground of the raising  
 of the Justices called, Trail Baston, and  
 their Courts so called, in respect of  
 their precipitate proceedings from day  
 to day, without such convenient leisure  
 and time, as Common Law allowed, &c.  
 they in the end had such Authoritie, as  
 Justices in Eyre; but albeit they had  
 their Authoritie by Act of Parliament,  
 if they erred in judgement, a writ  
 of error did lie by the general Rule of  
 the Common Law, to reverse the Judge-  
 ment in the Kings-Bench; which being  
 resolved, and known, and their  
 Jurisdiction fettered with so many li-  
 mitations, their Authoritie, by little and  
 little vanished.

Expost  
and  
Quer.

Was there any certain Pain established by this Statute, against the violators of *Magna Charta*, other than by Commission in Eyre, that the Justices might determine, and punish the Offenders by Imprisonments, Fines or Amerciaments, according to the Trespass? Ought not the Justices of the *Kings-Bench* to have so punished all such as were Indicted before Sheriffs, or Justices in Eyre, who had power to inquire, and certify them of all such Offenders, and Offences against *Magna Charta*, by the Statute of *Marlebridge*? 51. Hen. 3<sup>d</sup>? Doth not the Lord Coke say elsewhere, That all Statutes ought to be construed so, as that there should be no failer of Justice: Should not the Justices of the *Kings-Bench* have construed *Magna Charta* so? Doth not the 14<sup>th</sup> chap. of *Mag. Charta* expressly direct; That all offenders ought to be Amerciated by their equals, according to the quantitie of the Trespass? Doth the Lord Coke speak truth when he saith, this Statute gave any man Remedy for the certaintie of the punishment, other than *Magna Charta* did before? Was it not made more uncertain by referring it to the Justice

ces in Eyers discretion, whether Amerciaments, Fyne, or Imprisonment? Doth he not confess plainly, (when he saith, *It is true in effect, that the Pain was not Executed, as some read, instead of the Pain was not Established,*) That it was the fault of the Justices of the *Kings-Bench*, in not Executing the Pain of Amercyng, &c. (as they might, and ought to have done) was the cause of Impowering the Justices in Eyer, (who were but Enquirers before) now to determine, and punish such Offenders, and Offences, as they did forbear, *viz.* The Kings Servants, with whom by this time, they of the *Kings-Bench* tampered for their Offices? And was it not for the same cause, the people were Declared to be choosers of Justices in Eyer? And doth not the Lord *Coke* shew a great spight between himself, and his brethren; whom he would have to be ancient; and the Justices in Eyer, whom he calleth a new Court, and new Justices? And shew his Memory to be weak, as his Envy was strong, when he is forced to give himself the Lye, (either here, or in his Exposition of the Stat. of *Marle-*

bridge, where he saith; They were then Justices, and a Court, though but for Inquirie? And upon the 23<sup>th</sup> Chap. of Magna Charta; he saith, they used before that time to give charge to all Juries concerning Wears &c. Doth not the Lord Coke say, fol. 235. That Bracton wrote before the making West. 1. which was 3. Ed. 1? And doth not Bracton lib. 3. cap. 11, 12, and 13. say, Justices in Eyre were before his time? Doth not Camden in his Britannia, pag. 104. say, They were Instituted by King Hen. 2? Doth not Hoveden in his Annals, part. poster. fol. 113. b. confirm the same? And add that K. Hen. 2. divided the Realm in six parts, & settled three Justices in Eyre to every part, whose names he relateth? And doth not the Mirror of Justice lib. 3<sup>o</sup>. Tit. 1<sup>o</sup>. Justice in Eyre, declare their power at large? And as for their Election by the people, doth he not say, fol. 538. That Magna Charta, &c. containeth the substance of all that is contained in these Articles? And doth he not say in his Preamble, That Magna Charta is an Act declarative of the ancient Laws, and Customs of England before it, and no introductive of any new?

And



And fol. 558. That of ancient time, before the making of this Act, all such Officers, or Ministers, as were instituted, either for Preservation of the Peace of the County, or for execution of Justice (because it concerned all the Subjects of that County, and they had a great interest in the due and just exercise of their places) were by force of the Kings writs in every several County, chosen in full and open County, by the Free-holders of the same County? Again, (saith he,) So it was then, and yet is, of Coroners, and so it was then, and yet is, of Knights of the Shire for Parliaments; and of the Verdors of a Forest, and likewise it was of ancient time of the Sheriff of the County, and restored by this Act: but this is altered by divers Acts of Parliament. Now were not Justices in Eyre therefore that were before *Magna Charta* chosen by the people, as they were Ministers of Justice, wherein the people were concerned? And were they by this Act but restored to their ancient jurisdiction, as (the Lord Coke saith) Sheriffs were? Was not that alteration which was made by divers Acts of Parliament, made by such Acts as were contrary to

*Magna Charta* ? And are not, or ought not all such Acts to be void, (as the *L. Coke* hath elsewhere said ? ) Doth not these contradictions declare the Lord *Coke* to have been distracted with spight and envy against Justices in Eyre ? And where in this leaf, he would perswade the people to suspect Justices in Eyre, of corruption, and Monopolizing justice to wrong the people that chuse them ; can the people believe that these Justices (who are to be chosen by them, and to be displaced by them, when, and as often as they see cause ) will, or can wrong them more, than those chosen by the King and his Servants, without their consents, unless they can believe that they may be perswaded to give their consents to wrong themselves ? Is it not a Bull of less formality than ever any Popish Bull was , (keeping a man off with his Horns, That he shall have no hold of his tail ) when he saith, *That the clause, where no remedy was before, &c. ought to be expounded, where no Action was given by the Kings Writs, to be pursued at Common Law ?* Since by the Statute of *Marlebridge* , Justices in Eyre were to inquire

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inquire by the Kings Writs ; and now are, by exprefs words of this chapter, not onely to inquire, but alfo to determine by virtue of their Commissions, without the Kings Writs ? And what caufe could they, or can any other Court determine by virtue of their Commission, without the Kings Writs, but is Actionable by the Kings Writs ? What doth this Statute give by virtue of this Commission, if all things Actionable by Writs, be not determinable by these Commissions, without Writs ? And what doth this Statute avail, if not conſtructable as others ; ſo that there ſhould be no failer of juſtice ? Where was the failer of juſtice, but in the Kings Courts, and Iudges, in not executing juſtice upon the Offenders of *Magna Charta* ? Doth it not therefore appear that the ſaid clause (*where no Remedy was before*) ought to be expounded, where no remedy was given before by Juſtices in *weſtminſter* againſt the Kings Servants, and themſelves, that were the greateſt contractors in the breaches of *Magna Charta* ? Were not the Juſtices in Eyre therefore inabled with a power to ſupply their de-

faults, and to do right to the People, against the King himself, and all his Servants at *westminster*, that wilfully failed in their justice and power? And where he saith; *The Justices called, Trail Baston, had like authoritie as Justices in Eyre, and committed Errors, & upon pretence thereof, had all their proceedings transported to the Kings-Bench*; doth it not appear by the Statute called, *Ragman*, that those Iustices were made by the King, without the consent of the People, and sent abroad (perhaps of purpose) to err and abuse the people, to give colour to the *Kings-Bench*, to send their Writs of Error, for the proceedings of the Iustices in Eyre (upon pretence of like Errors) so to suppress all Iustice against themselves, and their Creatures? Doth not the Lord *Coke* herewithal prefer the chargeable delaies of causes (spun out by Termes, and Years,) before speedy justice done day by day, at mens own doors, which he calleth, *Precipitat*? Doth he not ground this course, for suppressing speedy justice by Writs of Errors, upon the resolution of the Iudges at *westminster*, which he al

leadgeth



leadgeth as sufficient to maister Authority given by Act of Parliament? And is it not the resolution of all Lawyers, that no power but Parliament, is equal to Parliament, and no Parliament to be so impowred as to cross *Magna Charta*, and its Confirmations? Doth he not further (fol. 559.) alleadge the resolution of all the Iudges of *England*, against the King and his Councel, for an Erroneous Act, when they had chosen a Sheriff for *Lincoln* in a case of necessity, without the consent of the People? But to hasten this Treatise to an end, I shall end this Statute for this time, with few chapters following, *viz.*

The King hath granted unto his people, that they shall have Election of their Sheriff in every Shire (where the Sheriffsalty is not of the Fee) if they list. Cap.8.

I shall say no more to this, than hath been said before.

In summons and Attachements in Plea of land, the Writs from henceforth shall contain 15. days full at the least, after the Common Law, & A- if it be not in Attachement of Assizes taken C.15. Summons.

taken in the Kings presence, or of Pleas before Justices in Eyre, during the Eyre.

Expost  
and  
Quer.

Upon this I must ask, Is not a Writ of Debt, Summons? Should not that be given to the party which ought to be summoned? Should not an Attachement follow by distinction of 15. days, as this Statute prescribeth? Shall the repealed Statute of the 25<sup>th</sup> of Ed. the 3<sup>d</sup>, serve Lawyers turns to make a distinction between a Plea real, and Personal? And shall that Writ of Summons be counterfeited, either in it self, or in its return, as aforesaid.

Ca. 16.  
False  
Retur.  
of Wr.

Such Executions shall be done of them that make false Returns of Writs, (whereby right is deferred) as it is ordained in the 2. Statute of Westminster, with like pain, at the Kings commandment.

L.C.  
upon  
Ca. 16.  
f. 568.

This is an Act of Confirmation, whereby the Statute of Westminster the 2<sup>d</sup>. cap. 39<sup>th</sup>. touching false returns, is confirmed.

Expost  
& Q.

Doth not the 2<sup>d</sup> Statute of Westminster cap. 39. say, That the King hath commanded that Sheriffs shall be punished.

*punished by the Justices once or twice if need be for such false Returns? and if they offend a third time, none shall have to do therewith but the King, &c? Doth not the Court of Kings-Bench assume the King to be always there in Person? And what they speak, to be his own speech? Is it not they therefore that should punish Sheriffs for their false Returns, the third time of their offence? But is it not indeed they, and their Creatures, as well as those of the Common-Pleas, do make false Returns in the names of the Sheriffs of London, and Middlesex, and do consequently make those Sheriffs liable to Actions, as aforesaid? How can they punish those Sheriffs for those false Returns, which they themselves suffer their Clerks to make, unknown to the Sheriffs, as aforesaid? And who but they cause, or suffer all Sheriffs falsely to Return Exigents with the words, *Per judicium Coronatorum*, and the Coroners names, who know no such thing? And if any man be Out-lawed without the judgement of the Coroners of his County, or any mention made thereof in the Sheriffs Return, is not that Outlawry as injurious to the*

the Party, Perjurious in the Judges who admit such a Return, and proceed upon it, and as Illegal in the Sheriff that makes such a Return, and as different from due Proces of Law, as the other? And do not those false Returns filed upon their Records, make all their proceedings thereupon, false, and faint Actions as aforesaid? And if all before written be not sufficient to make it appear to the world, that they are not onely Forgers, Perjurers, and Anathema's themselves, but also the onely causers of all others to be, or be accompted the like? And that their Lives, Lands, and Goods, are in the immediate dispose of the present State, by the judgements and confessions of their own mouths? Behold their Oath, which they voluntarily take when they assume their places, whereby they binde themselves further, before God, and man, as followeth, *viz.*

The Oath of the Kings Judges

We shall Swear, that well and lawfully ye shall serbe our Sovereign Lord the King, and his people, in the office of Justice, and that lawfully ye shall Counsel the King in his business, and that ye shall not counsel,



councel, nor assent to any thing which may turn him to damage, or disherison, by any manner way, or colour. And that Ye shall not know the damage, or disherison of him, whereof Ye shall not do him to be warned by Your self, or by other. And that Ye shall do even Law, and Execution of right to all his Subjects, rich, and poor, without having regard to any person. And that You take not by Your self, or by other, privily, nor apertly, gift, nor reward of gold, nor silver, nor of any other thing which may turn to Your profit. unless it be meat, or drink, and of small value, of any man that shall have any Plea, or Proces, hanging before You, as long as the Proces shall be so hanging, nor after the same cause. And that Ye take no Fee, as long as Ye shall be Justice, nor Robes of any man, great or small, but of the King himself. And that Ye give none advise, nor Counsel to no man, great nor small, in no case where the King is party. And in case that any of what Estate or Condition they be, come before You in Your Sessions with Force, and Arms, or otherways against the Peace, or against the form of the Statute thereof made, to disturb Execution of the Common Law, or to manace the people that they may not pursue the Law, that Ye do their Bodies to be Arrested, and put in prison: and in case they be such, that Ye may not Arrest them, that Ye

Ye certifie the King of their names, and of their Misprision hastily, so that he may thereof ordain a convenient remedie: And that You by Your selfe, nor by other, privily, nor apertly, maintain any Plea, or quarrel, hanging in the Kings Court, or else where in the Countrie: And that Ye denie to no man common right by the Kings Letters, nor none other mans, nor for none other cause; and in case any Letters come to You, contrarie to the Law, that You do nothing by such lett, but certifie the King thereof, and go forth to do the Law, notwithstanding the same Letters. And that Ye shall do, and procure the profit of the King, and of his Crown, with all things where Ye may reasonably do the same. And in case Ye be from henceforth found in default in any of the points aforesaid; Ye shall be at the Kings Will, of Body, Lands, & Goods, thereof to be done as shall please him: As God You help, and all Saints. Anno, 18. Edward, 3. Stat. 3.

Expost  
and  
Quer.

If Atheists can perswade Christians that this Oath was no binding for them that had taken it, (even the Wise, Learned, Reverend, Judges, Sages, Scientissimous Interpreters of the Laws of England,) sufficient to keep them within the compass of their Oath, Law, and Know-

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Knowledges? Shall not Christians  
perswade themselves, that it is a suffi-  
cient Confession, Declaration, and  
judgement of their own mouths that  
made it, that their forfeitures, *viz.*  
their Lives, Lands, and Goods, in  
case of their breach of any point of  
this Oath, are now immediately in  
the power of the State to dispose of  
to the publique use, at their plea-  
sures, without any further Proces, or  
proceedings in Law, but onely to  
give Order, and Warrant to Arrest  
the persons of such Offendors to  
stand to their censures; and to Se-  
quester their Estates, and to divide  
them to the said use, accordingly?  
Did Lords ever use any more Law  
than their own Wills, when they Se-  
questred, and punished their villains?  
Had Lords any more Law, Right, or  
Reason, to Sequester, and punish  
their villains at their own Wills, but  
for that their villains did take their  
Lands upon conditions to do those  
services which they and their Lords  
agreed upon, and gave their Lords  
their Oaths (as their greatest bonds)  
to perform those conditions, or in  
case of breach, to suffer their Lords  
to repossess their Lands, with the  
for-

forfeitures of their Goods, (which they gained) and their Lives (which they sustained) upon the same? Was the Oath of a Villain (though made by Parliament, to the end that Lords should be well served by their Slaves in their private and meanest Offices) of as considerable consequence to be observed, or in default thereof, their forfeitures to be executed, as the Oath of Judges, made and Confirmed by several Parliaments, to the end, that the common-wealth should be well served by their Justices in their publike, and most honourable (if rightly served) Offices of Judicature, and administration of Justice? Are not such Villains, as dare incroach, not onely upon their Lords Lands, and Estates, but also upon their Lives, and Liberties, dangerous, transcendent, Hyper-Prelatical Usurpers? Are not such Usurpers intollerable mischiefs in a Common-wealth? Who being sworn servants to the Common-wealth (as by this Oath it appeareth the Kings Justices were) make all the Common-wealth their servants, to attend their Trains at *westminster* at their pleasures? And

all



all Prisoners for Debt, not onely  
 their own Villains, but also Villains  
 to their Villainous Goalors, and  
 Slaves to their Slaves? Are not the  
 meanest of the Free-People of *Eng-*  
*land*, interested in the due executi-  
 on of Justice, to which these Judges  
 were sworn? (as well to them, as to  
 Kings) and consequently ought they  
 not to be such Lords as dare, and  
 will take the forfeitures of such Vil-  
 lains, as do them daily Injustice?  
 Is not this Oath a sufficient Evidence  
 in it self, that the takers of it, have, &  
 do dayly break it? & cause all others  
 that have, or do break it, to do so  
 likewise? Since Kings and People  
 have wholly referred themselves, and  
 their Estates, not onely to the Ju-  
 stice of their Judges, but also to their  
 fatherly advertisements, and admo-  
 nitions (whereby they ought not to  
 suffer any that depend upon them,  
 to err through ignorance) and they  
 (contrariwise) admonish none not  
 to offend, but suffer, and cause more  
 to offend than willingly, and wit-  
 tingly would; and so do, for want  
 of such admonitions, much more  
 increase, and enhance the Markets  
 of their Justice, by suffering no o-  
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ther Judges to admonish, or Justifie any offenders at home, and ingrossing all to themselves at *Westminster*, or before such as they send to fripper for them, in Assizes, Goal-Deliveries, and *Nisi prius's*. Have not some present Grafts of the old stock Judges of Assizes in possibility for the *Country*) & their Agents in *Chancery*, procured several late Injunctions to be dissolved in *Chancery*, without the privacy of both parties whom they concerned, to the end onely to beget work for them in the Assizes, lest they should want better? Did our late Judges lawfully counsel King *Charls* in his busines, when they gave their Resolutions for him concerning the Ship-money? Did they not assent to a thing, or things, that turned to his dammage and disherison, and overturned him, and his Posterity out of three Kingdoms, and his life to boot, when they assented to Ship-money, and Monopolies? Did not the Kings Councel and other Serjeants, and Lawyers, draw (if not plot) all such Patents? Got they not more by their Fees, for their advise therein, (which were present pay) than the King did by his reservations for interest in those

those Grants which are yet in Arrear? Was any thing reserved to the King thereby, but what his Councel learned thought fit, and advised him to take, and the Patentees to give? Did not those Judges, that had the keeping of both the Kings Seals, assent to all those unlawfull things, whatsoever they Sealed? Briefly, doth not this Oath in every point evidence the Judges at *Westminster*, and their brethren to have been the chief betrayers of Kings and People in their chief trust, to guide and hold both in the right way, and did they not lead both wrong? And thereby are the chief Authors of all the blood spilt, and estates ruined in these three Kingdoms, in and by these late Wars, which were undertaken for Reformation, onely of such deformities in Law, and Government, which (you see) they had power to keep in form by their lawfull judgements, or admonitions to the right, or not consenting to the wrong? Do not our Records, and History testifie, that all the Civil Wars of *England*, were alwaies undertaken for Reformation of Injustice, evil Govern-  
ment,

ment, and corrupt Lawyers that were alwaies the causers thereof, by breaking, and causing to be broken the Liberties of *Magna Charta*, which the People sought alwaies to recover? Were not *Hugh D' Burgo*, Chief Justice of England, *Walter D' Lancton*, Lord Treasurer of England, *Brember*, *Trisilian*, *Bellknapp*, *Thorpe*, &c. examples of their times in that case? If so few examples will not serve to make all Judges mend, should not all such Judges be made examples, to serve posterity to see that such evils are not necessary for Common-wealths? Shall such Extrajudicial Judges, such lawless Lawyers, &c. as will not be tied by Oaths, made in, and by Parliaments; Excommunications denounced by Authority of Parliaments; *Charters* Signed, Sealed, and Confirmed in, and by Parliaments; nor by Acts, Laws, and Statutes made by full and free Parliaments; be suffered to sit with Christians in Parliaments to make Laws, Votes, Oaths, and other Obligations upon Christians, which shall be none to themselves? But let us see further, what an other Act of Parliament saith to this Oath, as ensueth, *viz.*

Edward



Edward by the Grace of God, &c. The  
 To the Sheriff of Stafford, greeting. Statut.  
 Because that by divers complaints 20.E.3.  
 made to Us, We have perceived Pream.  
 that the Law of the Land, which We Letter.  
 by Our Dath are bound to main- Justice.  
 tain, is the less well kept, and the  
 execution of the same disturbed ma-  
 ny times, by maintenance, and pro-  
 curement, as well in the Court, as  
 in the Countrey: We greatly moved  
 of Conscience in this matter, and for  
 this cause, desiring as much for the  
 pleasure of God, and ease, and qui-  
 etness of Our Subjects, as to save  
 Our Conscience, and for to save and  
 keep Our said Dath, by the assent of  
 the Great men, and other Wise men  
 of Our Council: We have ordein-  
 ed these things following, viz.

First, We have commanded all Cap. I.  
 Our Justices, that they shall from  
 henceforth, do even Law, and execu-  
 tion of right to all our Subjects  
 rich & poor, without having regard  
 to any person, and without letting to  
 do right for any letters, or commande-  
 ment which may come to them from  
 Us, or from any other, or by any o-  
 ther cause. And in that any letters, Letter:  
 writs, or commandments come to the  
 Justices, or to other, Deputed to do  
 Law and right, according to the u-  
 sage of the Realm, in disturbance of  
 the Law, or of the execution of the  
 same, or of right to the parties; the  
 Justices, and other aforesaid shall  
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Justice

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proceed, and hold their Courts, and  
 Procesſes where the Pleas, and  
 matters be depending before them,  
 as if no ſuch Letters, Writs, or com-  
 mandments were come to them. And  
 they ſhall certifie Us, & Our Coun-  
 cel of ſuch commandments as be con-  
 trarie to the Law, (as before is ſaid)  
 And to the intent that our Juſtices  
 ſhould do even right to all people, in  
 the manner aforeſaid, without more  
 favour ſhewing to one, more than to  
 another, We have done Our ſaid  
 Juſtices to be ſworn, that they ſhall  
 not from henceforth, as long as they  
 ſhall be in office of Juſtice, take Fee  
 nor Roabe of any man, but of Our  
 ſelf. And they ſhall take no gift, nor  
 reward by themſelves, nor by other,  
 privily, nor apertly of any man  
 that hath to do before them, by any  
 way, except meat and drink, and that  
 of ſmall valure; and that they ſhall  
 give no counſel to a great man, nor  
 ſmall, in caſe where We be Partie,  
 or which do, or may touch Us in any  
 point, upon pain to be at Our will,  
 Bodie, Lands, and Goods, to do  
 thereof as ſhall pleaſe us, in caſe they  
 do contrarie: And for this cauſe  
 We have increaſed the Fees of the  
 ſame our Juſtices, in ſuch manner,  
 that it ought reasonably to ſuffice  
 them.

Expoſt  
and  
Quer.

Doth not the King ſay here, He is  
 bound by his Oath to maintain the  
 Laws

Laws of the Land? Dorth not the Lord Coke say before, *That a King in his Politick capacitie cannot dye?* Did not, or ought not all Kings of *England* take the like Oath as this King did? Were they not therefore bound to maintain the Laws of *England* as well as he? and to be advised, and ruled by their Judges, how to maintain them? as the Oath of the Judges, this Statute, and others, do manifest they were? Are not Judges as Immortal as Kings in their Politick capacity? Are they not bound by their Oaths, not onely to maintain, and execute the Laws of *England* against all men, without regard of Persons, but also to advise their Kings to maintain them, and how so to do, and to hinder, or not consent with their Kings to break them? Were not the maintenances (whereof the King here complaineth, and the procurements as well in Court, as in Countrey, whereby (he saith) *the Laws, and the due execution thereof were disturbed*) the remainders of the Factions of the *Spencers*, and others, who in *Edward* the 2<sup>d</sup> his time had made such Judges, as had put all Laws out of all order; so

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that

that this King, being *Edward the 3<sup>d</sup>*, could not reform what had been deformed hitherto? but now endeavourereth to do it by means of this Oath made in Parliament in the 18<sup>th</sup>. year of his Reign, and this Act made in the 20<sup>th</sup>. If Kings endeavoured to perform their duties (as this King did, and Judges would not) should not such Judges suffer, as in this Kings time divers did? If Kings, and Judges, (contrary to their Oaths, and Offices) omit their duties (as this Kings Father, and his Judges did) should not such Kings and Judges suffer for their defaults, as he and they did? If Kings, and Bishops did lately neglect their duties, (contrary to their Oaths, and Offices) and were punished for their defaults? why not such Judges as were the greater Delinquents for suffering them so to offend? and more for consenting thereto? And more than that, when they advised the same? If the secret Sacrilege of one *Achan* deserved Gods indignation against all his People of *Israel*, until they discovered, and punished him, and his Offence? What doth the manifest extortion (a sin no less

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## *Judges judged.*

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less prohibited than Sacriledge) of  
so many *Achans*, merit of Gods  
Judgements against the whole Nati-  
on of *England*, if they prosecute not,  
or leave unpunished, their Offences,  
which are more than Extortions; as  
Perjuries, Forgeries, Sacriledge it  
self, and divers others spoken of be-  
fore. *Judge, O People? Judge, your  
selves, O ye People, least ye be Judged.*

*F I N I S.*

### *P O S T - S C R I P T.*

**I***F it please the Parliament  
to require more proofs  
than common experience of  
the common breach of all the  
Common Law of England,  
by our common Mercenary  
Judges, they may cause Com-  
missions in Eyre, or other  
Oyers, and Terminers to be  
issued to clear the matter by  
more particular evidences.*

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Eight Observable  
**P O I N T S**  
 O F  
**L A W;**

Executable by Justices of  
 the Peace in their *Counties,*  
 and Magistrates in their  
*Corporations.*

Necessary to be known to the  
**COMMON PEOPLE.**

I



Counties and Sheriffs Turns, were <sup>1. The</sup> <sup>choise</sup> <sup>of all</sup> <sup>Officers</sup> <sup>of Peace</sup> <sup>and</sup> <sup>Trust,</sup> <sup>anci-</sup> <sup>ently in</sup> <sup>the</sup> <sup>People,</sup> <sup>cōfirm-</sup> <sup>ed by</sup> <sup>Magna</sup> <sup>Chart.</sup>  
 ancient Courts in the time of King Arthur, & before; And in the Turns  
 were tried all Pleas of the Crown; & in the Counties all *Common-Pleas* under forty shillings without Writ; and above, to any value with Writs, according to the Law maxim, *Quod placita de Catallis, debitis &c. quæ summam 40<sup>l</sup>. attingunt, vel excedunt*

*secundum legem & consuetudinem Angliae, sine breui Regis placitari non debent.* See the Lord Coke upon the 35<sup>th</sup> Chap. of *Magna Charta*; and upon the Statute of Gloucester fol. 310. & 312. Hundreds, and Court Barons have the same power, and rights, and neither Sheriffs nor Stewards are Judges, but suiters onely, fol. 312. And so all men were to have Law and Justice at home, cheap and near, and not to fetch it from *Westminster*, far and dear. And the Conservators, otherwise called Guardians of the Peace before *Magna Charta*, and since; had all necessary power to govern their Counties in Peace, and to execute all Laws conducting thereunto, and to command the power of their Counties to assist them; and were chosen (as all other Officers of Peace and Trust were) by their Counties, as the Lord Coke affirmeth.

2. *This Mutuatus is usual in the Kings-Bench, and Common-Pleas, to fetch poor men not worth 40. s. from York or Cornwall to London, for 5. s.*

2. As Superiour Courts ought not to incroach upon Inferiour, so the Inferiour ought not to defraud the Superiour, of those causes that belong

to



to them : viz. Neither debt or less, and so  
ought a man be sued in Outlaw him in the  
any Court of Record for Common-Pleas, if  
debt not amounting to he come not ; which  
40<sup>l</sup>. by way of *mutuatus*, of Record follow too  
and other lawless tricks much.  
daily used by Attornies ; nor in  
any inferiour Court for debt of  
40 shillings, or exceeding, by di-  
viding it into Actions under 40 shil-  
lings. In which cases the Defendant  
ought to be admitted to plead to the  
jurisdiction of the Court, and to have  
a *Prohibition* to stay the suit : see  
the Lord Coke, upon the Stat. of  
*Glouc.* fol. 311. And all Courts were  
to dismiss all Actions entred without  
sufficient bail to prosecute, answer-  
able for costs and damages. If  
non-suited, or cast; and not *Jo. Do.*  
and *Rich. Ro.* as is used. See *F. H. Just.*  
*P. the Register*, and *Fitz. H. Nat.*  
*brevium* at large. And no Court of  
*Record* was to proceed in any action  
of debt, before the Plaintiff swore his  
said debt to be 40<sup>l</sup>. or more, and his  
damage in trespass to be so much at  
least : And if Battery, that he was  
beaten indeed, to his uncurable hurt  
to that value. See the Stat. of *Glouc.*  
and the L. Coke upon it, with his

reason for the discontinuance of this practice.

3. Doth not the denial of an Habeas Corpus, to bring a prisoner before a Judge without Fees, (both to Judge and Attorney) include the sale, delay, and denial of Justice, while the prisoner is unprovided to buy it.

3. All the Kings Writs for the doing justice and right to all men freely and speedily, without delay or denial, ought to be granted, and had freely at the Kings cost: And justice ought to be done freely, without sale; fully, without denial; and speedily, without delay: whereby (saith the Lord Coke) it appeareth that justice must have three qualities, viz. To be Free, because nothing is more vile, than what is venal; Full, and perfect, that it may not halt; And speedy, because delay is a kind of denial. See the L. Coke upon the Stat. of Marlbr. chap. 80. Thus to have and do, was the Common Law of England, and the Liberties, and Right of the People before Mag. Char. and saved unto them by it: and the best Birth-right they ever had, or can have; whereby their Lands, Goods, Wives, Children, Bodies, Lives, Honours, and Estimations ought to be protected from injuries. See the L. C. upon the 29 & 38 c. of M. C.

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4. Therefore *Magna Char.* ought to be read, and published to the People in all Cathedrals twice yearly: And all breakers thereof are excommunicated *ipso facto*, and so twice pronounced by two Acts of Parliament, *Tit. confirm. & excommengm<sup>t</sup>. in Rast. abridg. fol. 65. and 148.* And it ought to be read in full County in every shire, four times yearly, and all the breakers thereof inquired of there; and further inquired of, and punished by Fines, Imprisonments, &c. by Justices in Eyre, two of every Counties chusing, whereby 12. or 14. may serve in circuits throughout *England, and Wales*, divided into six or seven Provinces, as twelve did serve for all *England* divided into six. See, and compare *Rast. abridg. fol. 65. and Rog. Hoveden parte poster. Annal. fol. 548.*

The not reading, and publishing of *Mag. Char.* is the default partly of Sheriffs not requiring it; partly of the Clerk of the Crown, &c. not sending it to them under Seal. All defaults of Sheriffs, &c. are inquirable, and punishable by Justices of

Peace; as Lamb. Fitz. H. Crompt. Dalt.  
&c. affirm at large.

5. Observe the people's choice resumed by this Statute, when the King presumed to make Justices of P. and under that Specious Title to empower them, first to affront, and by degrees to suppress, and at last to extinguish the larger power of Conservators. A Prerogative imposture devised by Lawyers for their own advantage, when they got the King to confer this creation of Justices of Peace, upon his Chancellours, and Keepers, to whom their creatures became obliged to subject all England to Westminster, contrary to Mag. Char.

5. Justices in Eyre are discontinued long since, and not onely for that they were interrupted, and wearied out by the Prerogative Judges, and Courts at Westminster by their Certioraries, Corpus cum causa, Errors, and other Writs (as the Lord Coke confesserth in his Exposition of the Stat. called *Act. super Chart.* fol. 540. ) but also for that Justices of Assize, Justices of Peace, and all Oyers, and Terminers by their Commissions, and Magistrates of Corporations by their Charters, were enabled & sworn to hear and determine all Trespasses, Contempts, Oppressions, and Misdemeanours, according to the Laws and customs of England, as appeareth in, and by all Commissions of the Peace, Oyers, Terminers, and Charters that have Oyer and Terminer, and by the Stat. made for the first



first institution of Justices of Peace, in the 18<sup>th</sup> year of Ed. 3<sup>d</sup>. in which year was also ordained the Oath of all Judges, and Justices of Oyer and Terminer for the due execution of justice, without sale, delay or denial, which the thrice reverend Judge *Anthony Fitz Herb.* admonisheth them that consider it, and their duty to God, and their Countrey, not to break upon any conditions, *Nat. brevium* fol. 240. d. but now the common practice is otherwise.

6. Any that Will, ought to have Commissions of Oyer and Terminer for all Extortions, Oppressions, and Misdemeanours of Sheriffs, Undersheriffs, Escheatours, Bayliffs, Clerks, and all other Officers: See *Crompt. Just. Peace*, fol. 51. 8. *Fitz. H. Nat. br.* fol. 112. d. And Justices of Peace, and all other Commissioners that ought by their Commissions, and Oaths, to punish all such offences, & do not, are no less than perjurors, and the greatest malefactours of all other, themselves. Nor can any

6. Justices of Peace ought not to be seduced to transgress M. C. and the Petition of Right, by any Stat. that contradicts them, nor to lose the publicke interest for any Prerogative usurpation, but to resume their authority to the People, to act as conservators of the ancient peace, and profit of the Commonwealth: as in cases of Remitter, men stand to their best Title.

Writs

Writs of *Certiorari*, *Corpus cum causa*, *Error*, *Supersedeas*, or putting out of Commission, excuse or supercede them to finish their Judgements, and Executions in all such causes brought in question before them: See and compare the Stat. of 2. *Ed.* 3. and 14. *Ed.* 3. 14. and the 20. *Ed.* 3. 1. and the *Procedendo* thereupon in *Fitz. H. Na. Bre. fol. 240.* where it is said; *They shall proceed to justice according to law, notwithstanding any Letter, Commandment, Prohibition, Writ, Privy-Seal, or Great Seal to the contrary.* And if any such things be granted by the King, or any of his Judges, or Courts, such a *Procedendo* ought to be granted by the Keeper of the Broad Seal to countermand them; and to command justice, judgement, and execution to be done, even against the King, much rather against Judges, who under colour of Authority and justice, delude and wrong Kings, and People: For (saith the L. Coke upon the Stat. of *Marlebridge*, cap. 5.) *there is no greater injustice, than when under colour of Justice, men are injured: but Writs of Certiorari Corpus cum causa, and Error, ought to be had, and granted,*  
upon

upon proof of malice, partiality, injustice, or error in matter, committed by any inferior Court, but not upon suggestions, or bare suppositions, as is used: See and compare therefore all the said Statutes in this case, together with M. Dearhams Manuel, p.25. Nor by any Superior Judges or Courts that are parties, or concerned in the cause. see the L. Coke upon Art. super Chart.

7. The granting of Writs, or Commissions to do injustice by, or to stay, or delay justice, where it is done, or doing; or to deny Writs or Commissions to cause or further justice to be done, (which always was, and yet is the practice of the Prerogative Judges at *Westminster*; not onely to cross, & interrupt Commissioners legally chosen in, and by their Counties, (as Justices in Eyre were) and such, and all Justices of Peace, and Officers of Trust, and concernement in, and to the Common-wealth, still ought to be) is the worst of all Oppressions, and a general destruction of Law and People, com-

*7. These oppressions are daily committed by mercenary lawyers, by colour of Statutes of their own devices against Mag. C. which Stat. ought to be repealed, & the longer execution thereof resisted by all, or any necessary means.*

committed by colour of an usurped Authority, as saith the L. Coke upon the Statute of *Marlebr.* cap. 5. To prevent which (his Lordship further saith) *It is lawfull for the People to take up Arms, or for Inferiour Judges to commit their Superiours and that before any Verdict, or Judgement, because they worthily loose the benefit of Law, who intend to subvert it; and Subordinate authority is more to be obeyed, and assisted in the execution of Justice, than the Supreamest to be indured to obstruct it.* All this, and more, is to be read in effect, in the L. Cokes Exposition upon *Art. super Char.* and the Stat. of *Marlebr.* which if executed by Justices of Peace in their Counties, and Magistrates in their Corporations, would soon regulate abuses, settle Peace, and much inable the State, and Common-wealth to pay publike debts, and relieve distressed Souldiers: For it is Law it self, as virtue it selfe, invirtuateth, dignifieth, and authorizeth her true servants to execute her precepts; and confoundeth, expulseth, and turneth out of her service all her unjust Stewards, and underminers: As *Jacob*, and *David*

were



were preferred before their elder brethren; and Saul, Jeroboam, &c. were confounded by, and for their own Apostacies.

8. Under the Titles of Trespasses, Contempts, Oppressions, Misdemeanours, are comprehended all breaches of *Magna Char.* and all Offences against all Statutes in force, and concurrent with *Mag. Char.* and the *Petition of Right*, which all Justices of Peace, and Magistrates in their several jurisdictions, are Authorized, and sworn to hear and determine, without fear, favour or respect of persons. How then to be excused, or delayed by any Writ, or command of any Superiour? And how are the Judges of the *Kings-Bench* (whereof the cheif was the *Kings Deputy* by Writ) now Superiour, or equal to any other Judges, or Justices? If that maxim be true *moritur Actio cum Personâ*? But the Office of a Deputy dyeth with its Master, as a Letter or Warrant of Attorney, with its marker:

8. As in all these cases, &c. all Justices of Peace should be careful to observe their Oaths, and perform their duties to the Common-wealth (whereof they are eminent members) So, no doubt the Freemen of England, would be ready to assist them in the regaining and preservation of their ancient Birth-rights, Laws, and Liberties. Deus Faxit.

ker: the *King-Bench* may be spared as well as his person? And all causes in this Common-wealth, be called Common-Pleas, and tryed by the Common Law of the land, and Verdicts of common people, and Free-holders of every Countrey, and Corporation, before the Free Judges, & Magistrates freely chosen by the said Common and Free-People, to justifie them at home, and not before mercenary makers, expounders, and sellers of all Lawes, and Liberties, as they please at *westminster*. And doth not the said Stat. of 28. *Ed. 3.* warrant Justices of Peace, or any two of them (whereof one to be of the *Quorum*) to call and keep Sessions as often as they see need to do justice to their Countrey? See the Stat. at large, and *Crompt. I. P.* fol. 112. and *F. H. I. P.* fol. 10.

Whereunto adde, That as *Magna Charta* compriseth all the Law of this land agreed upon by Kings and People, and would be read and published in English (as aforesaid) for the better understanding thereof by all English People, to the end, that the ignorance of their Law, should be no excuse for any of them to trans-

transgress it : So how needless it is, if not pestiferous, to have this Common-Law reduced to a private mercinarie Trade, or particular science exceeding the seven Liberal, by such professors thereof, as have, and do endeavour to disguise, mask, and hide it from all but themselves, in base French, and Latine intricacies and obscurities, to the end to make all persons offenders thereof, and none excusable, but by their resolutions of their own Riddles, which are alwaies answerable to their Fees (be the cause right or wrong) where-by the cure of Law becometh an incurable disease, until that superfluous mercinary profession be abolished, or regulated, so as the best and soundest Lawyers may be used in Parliaments (as in former times) to sit upon Wol-sacks, to answer to what that high Court shall be pleased to aske them, and not as members of that Court, to make Lawes, and Oaths for others, which they never observe themselves but for their own gain, and the peoples damage : To which end, they alwaies preamble their inventions against *Mag. Char.* with titles of Acts for the good

good of the people, when in their subsequents they hurt all but themselves; As (passing by all former) their last Acts for the enlarging of poor prisoners for debt, sufficiently witness; whereby neither creditor nor debtour are any way relieved, but both further entangled, and Lawyers Fees more procreated; *Videat experientia. Conclusive*; That there can be no firm peace, or end of Wars, till there be an end of mercinarie professors of Law, less needful, or useful for Parliaments or People, than Bishops, or such as might be used there, or elsewhere, for saying, or reading prayers; while these neither pray, preach, nor study, but their own lucrative magnificence every where upon the peoples purses.

Adde lastly; Such Justices of Peace as will not execute *Mag. Char.* with its confirmations, and the *Petition of Right*, and desert, and wave the execution, and practice of contradictory Statutes, (for zeal to their Creators, or fear to be unmade by those that made them) ought to be deserted and waved by all good Patriots of their countrey, as excommunicated



nicated persons, and breakers of *M. Cha.* And such onely as will execute *Mag. Ch. &c.* ought to be confirmed by the choise of the *People* in their Counties respectively, whereby they may act as the ancient Conservatours of the Peace did by the Common Law of *England* before *Mag. Char.* and since, which was, to conserve the Peace of *England* by all necessary means, word, or sword; unlimited by Prerogative Statutes devised by mercinary Lawyers, to steal from the People their birth-right Authority in the name of the King, unto themselves, to sell, delay, and deny it at their pleasures; which to do, is apparently contrary, not onely to *Mag. Char.* and the Common Laws of *England*, and also to common reason, but chiefly to the divine Providence of God: for neither Law, Reason, nor Divine justice, would ordain a man to conserve the publike peace of Gods people (which peace, as they, is his own) without giving that man an unlimitable power, by which he may execute his Office, and without which he cannot.

*F I N I S.*